

Wednesday
January 27, 1988

Federal Register

Briefing on How To Use the Federal Register—

For information on briefings in Seattle, WA, San Francisco, CA, and Washington, DC, see announcement on the inside cover of this issue.



FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for \$340.00 per year, or \$170.00 for 6 months in paper form, or \$188.00 per year, or \$94.00 for six months in microfiche form, payable in advance. The charge for individual copies is \$1.50 for each issue, or \$1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 53 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-783-3238
Magnetic tapes	275-3328
Problems with public subscriptions	275-3054

Single copies/back copies:

Paper or fiche	783-3238
Magnetic tapes	275-3328
Problems with public single copies	275-3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523-5240
Magnetic tapes	275-3328
Problems with Federal agency subscriptions	523-5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

SEATTLE, WA

- WHEN:** February 11; at 9:00 a.m.
- WHERE:** North Auditorium,
Fourth Floor, Federal Building,
915 2nd Avenue, Seattle, WA.
- RESERVATIONS:** Call the Portland Federal Information Center on the following local numbers:
- | | |
|----------|--------------|
| Seattle | 206-442-0570 |
| Tacoma | 206-383-5230 |
| Portland | 503-221-2222 |

SAN FRANCISCO, CA

- WHEN:** February 12; at 9:00 a.m.
- WHERE:** Room 2007, Federal Building,
450 Golden Gate Avenue,
San Francisco, CA.
- RESERVATIONS:** Call the San Francisco Federal Information Center, 415-556-6600

WASHINGTON, DC

- WHEN:** February 19; at 9:00 a.m.
- WHERE:** Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
- RESERVATIONS:** Roy Nanovic, 202-523-3187

Contents

Federal Register

Vol. 53, No. 17

Wednesday, January 27, 1988

African Development Foundation

NOTICES

Meetings; Sunshine Act, 2347

Agricultural Marketing Service

RULES

Cotton:

Classification, testing, and standards

User fees, 2213

Agriculture Department

See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Federal Crop Insurance Corporation; Food and Nutrition Service; Rural Electrification Administration

NOTICES

Committees; establishment, renewal, termination, etc.:
National Arboretum Advisory Council, 2261

Animal and Plant Health Inspection Service

RULES

Interstate transportation of animals and animal products:

Brucellosis—

State and area classifications, 2221

Arts and Humanities, National Foundation

See National Foundation on the Arts and the Humanities

Civil Rights Commission

NOTICES

Meetings; State advisory committees:
Nebraska, 2261

Coast Guard

PROPOSED RULES

Outer Continental Shelf activities:

Manual OCS facilities; emergency evacuation plan, 2236

Commerce Department

See Foreign-Trade Zones Board; International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration

Defense Department

PROPOSED RULES

Federal Acquisition Regulation (FAR):

Health care services, nonpersonal services contracts, 2464

NOTICES

Agency information collection activities under OMB review,
2265, 2266

(2 documents)

Meetings:

Science Board task forces, 2266

Drug Enforcement Administration

RULES

Schedules of controlled substances:

3,4-Methylenedioxymethamphetamine, 2225

NOTICES

Applications, hearings, determinations, etc.:

Arenol Chemical Corp., 2301

DuPont Pharmaceuticals, 2301

Norac Co., Inc., 2301

Philadelphia Seed Co., 2301

Economic Regulatory Administration

NOTICES

Natural gas exportation and importation:

North Canadian Resources, Inc., 2269

Northwest Pipeline Corp., 2270

Windward Energy & Marketing Co., 2272

Education Department

NOTICES

Meetings:

Education Statistics Advisory Council, 2266

Energy Department

See also Economic Regulatory Administration; Federal Energy Regulatory Commission

NOTICES

Privacy Act; systems of records, 2266

Environmental Protection Agency

PROPOSED RULES

Pesticide, food, and feed additive petitions:

Paper fiber, 2238

Water pollution control:

State underground injection control programs—

Mississippi, 2238

NOTICES

Pesticides; emergency exemptions, etc.:

Harmony, 2285

Hydrogen cyanamide, 2284

Equal Employment Opportunity Commission

NOTICES

Meetings; Sunshine Act, 2347

Export Administration

See International Trade Administration

Federal Aviation Administration

RULES

Air traffic operating and flight rules, etc.:

Airplane operation and foreign air carrier security rules;
correction, 2223

PROPOSED RULES

Airworthiness directives:

Cessna, 2227

DeHavilland, 2228

Federal Communications Commission

NOTICES

Common carrier services:

North Atlantic Region; common carrier transmission
facilities, construction and use; policies and
guidelines, 2285

Federal Crop Insurance Corporation

NOTICES

Meetings:

Board of Directors, 2261

Federal Deposit Insurance Corporation**RULES**

Unsafe and unsound banking practices:
Insured nonmember banks; subsidiary securities
activities; correction, 2223

Federal Energy Regulatory Commission**RULES**

Electric utilities (Federal Power Act):
Hydroelectric projects; fish and wildlife agencies
reimbursement fees, 2224

NOTICES

Hydroelectric applications (STS Engineers Ltd. et al.), 2272
Natural gas certificate filings:
Columbia Gas Transmission Corp. et al., 2275
Natural gas companies:
Certificates of public convenience and necessity;
applications, abandonment of service and petitions to
amend, 2277
Small power production and cogeneration facilities;
qualifying status:
General Mills, Inc., et al., 2280
Applications, hearings, determinations, etc.:
Equitable Gas Co., 2282
Florida Gas Transmission Co., 2282
Maryland People's Counsel et al., 2282
Metropolitan Edison Co., 2283
Placid Oil Co., 2283
Williston Basin Interstate Pipeline Co., 2284

Federal Highway Administration**PROPOSED RULES**

Engineering and traffic operations:
Uniform Traffic Control Devices Manual—
Amendments, 2233

NOTICES

Environmental statements; notice of intent:
Bartow County, GA, 2345

Federal Maritime Commission**NOTICES**

Agreements filed, etc., 2287, 2288
(2 documents)
Investigations, hearings, petitions, etc.:
Marine terminal facilities; rates, charges, and services,
2288

Federal Reserve System**NOTICES**

Applications, hearings, determinations, etc.:
CNB Bancorp, Inc., et al., 2288
Williams, Claudine, 2289

Federal Trade Commission**RULES**

Prohibited trade practices:
Albertson's, Inc., 2223
Commodore Corp., 2224

PROPOSED RULES

Prohibited trade practices:
Silver Group, Inc., 2230

Financial Management Service

See Fiscal Service

Fiscal Service**NOTICES**

Surety companies acceptable on Federal bonds:
Chilton Insurance Co., 2346

Van Tol Surety Co., Inc., 2346

Fish and Wildlife Service**NOTICES**

Alaska Land Bank agreements, 2296
Environmental statements; availability, etc.:
Andean condors in Ventura County, CA; experimental
release and recapture; proposal and meeting, 2297

Food and Drug Administration**RULES**

Organization, functions, and authority delegations:
Center for Veterinary Medicine, division directors, 2225

PROPOSED RULES

Human drugs:
Oral health care drug products (OTC); tentative final
monograph, 2436

NOTICES

Committees; establishment, renewal, termination, etc.:
Vaccines and Related Biological Products Advisory
Committee, 2289

Meetings:

Advisory committees, panels, etc., 2289

Food and Nutrition Service**RULES**

Child nutrition programs:
Women, infants, and children—
Special supplemental food program; funding formula,
2213

Foreign-Trade Zones Board**NOTICES**

Applications, hearings, determinations, etc.:
Tennessee
Komatsu Construction/Industrial Equipment Plant, 2261

General Services Administration**PROPOSED RULES**

Federal Acquisition Regulation (FAR):
Health care services, nonpersonal services contracts, 2464

Health and Human Services Department

See Food and Drug Administration; Health Care Financing
Administration; National Institutes of Health

Health Care Financing Administration**NOTICES**

Medicare:
Ambulatory surgical centers—
Covered surgical procedures; list; correction, 2291

Immigration and Naturalization Service**PROPOSED RULES**

Immigration:
Marriage fraud, 2426

Indian Affairs Bureau**NOTICES**

Claims settlement:
Wampanoag Tribal Council of Gay Head, Inc., 2295

Interior Department

See Fish and Wildlife Service; Indian Affairs Bureau; Land
Management Bureau

International Broadcasting Board**NOTICES**

Meetings; Sunshine Act, 2347

International Trade Administration**NOTICES**

Antidumping and countervailing duties:
 Administrative review requests, 2262
 Committees; establishment, renewal, termination, etc.:
 Trade Policy Matters Industry Policy Advisory
 Committee, 2263

International Trade Commission**NOTICES**

Import investigations:
 Buoyant metallic balloons, 2299
 High geometric surface area catalysts and components,
 2299
 High intensity retroreflective sheeting, 2297
 Marine automatic pilots, 2299
 Plastic light duty screw anchors, 2298
 Recloseable plastic bags and tubing, 2298
 Meetings; Sunshine Act, 2347

Interstate Commerce Commission**NOTICES**

Railroad operation, acquisition, construction, etc.:
 Benton Central Railroad Co., 2300

Justice Department

See also Drug Enforcement Administration; Immigration and
 Naturalization Service

NOTICES

Pollution control; consent judgments:
 Youngstown Thermal Corp., 2300

Labor Department

See Mine Safety and Health Administration

Land Management Bureau**NOTICES**

Environmental statements; availability, etc.:
 Phoenix District, AZ, 2296

Mine Safety and Health Administration**RULES**

Coal mine safety and health:
 Underground coal mining—
 Roof, face, and rib support, 2354

PROPOSED RULES

Coal mine safety and health:
 Underground coal mining—
 Ventilation standards, escapeways, and boreholes in
 advance of mining, 2382

National Aeronautics and Space Administration**PROPOSED RULES**

Federal Acquisition Regulation (FAR):
 Health care services, nonpersonal services contracts, 2464

National Bureau of Standards**NOTICES**

Information processing standards, Federal:
 Calendar date, representations of local time of the day for
 information interchanges, etc., 2263

National Foundation on the Arts and the Humanities**NOTICES**

Meetings:
 Humanities National Council, 2301

National Highway Traffic Safety Administration**PROPOSED RULES**

Anthropomorphic test dummy; side impact, 2254
 Motor vehicle safety standards:
 Occupant crash protection—
 Side impact protection, 2239

NOTICES

Meetings:
 Rulemaking, research, and enforcement programs, 2345

National Institutes of Health**NOTICES**

Meetings:
 Animal Resources Review Committee, 2291
 National Cancer Institute, 2292, 2293
 (4 documents)
 National Institute of Child Health and Human
 Development, 2293
 National Institute of Diabetes and Digestive and Kidney
 Diseases, 2294, 2295
 (4 documents)
 National Institute on Aging, 2293
 National Library of Medicine, 2295

National Oceanic and Atmospheric Administration**NOTICES**

Permits:
 Experimental fishing, 2265

National Transportation Safety Board**NOTICES**

Meetings; Sunshine Act, 2347

Nuclear Regulatory Commission**NOTICES**

Nuclear Waste Policy Act:
 High-level waste program; toll free telephone recording
 change, 2302
 Operating licenses, amendments; no significant hazards
 considerations:
 Biweekly notices, 2305
Applications, hearings, determinations, etc.:
 Mississippi Power & Light Co. et al., 2302
 Toledo Edison Co. et al., 2303

Postal Service**PROPOSED RULES**

Practice and procedure rules:
 Stolen mail matter and property acquired by Postal
 Inspection Service for use as evidence, disposition,
 2236

President's Commission on Privatization**NOTICES**

Meetings, 2346

Privatization, President's Commission

See President's Commission on Privatization

Public Health Service

See Food and Drug Administration; National Institutes of
 Health

Rural Electrification Administration**RULES**

Federal Financing Bank loans, REA guaranteed;
 prepayment, 2468

Securities and Exchange Commission**NOTICES**

Self-regulatory organizations; proposed rule changes:

American Stock Exchange, Inc., et al., 2333

Municipal Securities Rulemaking Board, 2335

Applications, hearings, determinations, etc.:

College Retirement Equities Fund et al., 2336

Institutional Investors Tax-Advantaged Income Fund, Inc.,
2339

Public utility holding company filings, 2342

Small Business Administration**NOTICES**

Disaster loan areas:

Marshall Islands, 2344

Puerto Rico, 2345

Meetings; regional advisory councils:

North Carolina, 2344

Texas, 2344

Applications, hearings, determinations, etc.:

Revelation Resources, Ltd., 2345

Transportation Department

See Coast Guard; Federal Aviation Administration; Federal
Highway Administration; National Highway Traffic
Safety Administration

Treasury Department

See Fiscal Service

Separate Parts In This Issue**Part II**

Department of Labor, Mine Safety and Health
Administration, 2354

Part III

Department of Labor, Mine Safety and Health
Administration, 2382

Part IV

Department of Justice, Immigration and Naturalization
Service, 2426

Part V

Department of Health and Human Services, Food and Drug
Administration, 2436

Part VI

Department of Defense; General Services Administration;
National Aeronautics and Space Administration, 2464

Part VII

Department of Agriculture, Rural Electrification
Administration, 2468

Reader Aids

Additional information, including a list of public
laws, telephone numbers, and finding aids, appears
in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR

27.....	2213
28.....	2213
61.....	2213
246.....	2213
1786.....	2468

8 CFR**Proposed Rules:**

1.....	2426
204.....	2426
205.....	2426
211.....	2426
212.....	2426
214.....	2426
216.....	2426
223.....	2426
223a.....	2426
235.....	2426
242.....	2426
245.....	2426

9 CFR

78.....	2221
---------	------

12 CFR

337.....	2223
----------	------

14 CFR

108.....	2223
129.....	2223

Proposed Rules:

39 (2 documents).....	2227, 2228
-----------------------	---------------

16 CFR

13 (2 documents).....	2223, 2224
-----------------------	---------------

Proposed Rules:

13.....	2230
---------	------

18 CFR

389.....	2224
----------	------

21 CFR

5.....	2225
1308.....	2225

Proposed Rules:

201.....	2436
356.....	2436
369.....	2436

23 CFR**Proposed Rules:**

655.....	2233
----------	------

30 CFR

75.....	2354
---------	------

Proposed Rules:

75.....	2382
---------	------

33 CFR**Proposed Rules:**

140.....	2236
143.....	2236
146.....	2236

39 CFR**Proposed Rules:**

946.....	2236
----------	------

40 CFR**Proposed Rules:**

145.....	2238
180.....	2238

43 CFR**Proposed Rules:**

23.....	2464
37.....	2464
52.....	2464

49 CFR**Proposed Rules:**

571.....	2239
572.....	2254

Rules and Regulations

Federal Register

Vol. 53, No. 17

Wednesday, January 27, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 27, 28, and 61

Revision of User Fees for Cotton Classification, Testing, and Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as final rule the provisions of an interim rule which increased the user fees charged for cotton classification, testing, and standards. The revision in fees reflects the recent amendment to the Cotton Statistics and Estimates Act and is necessary to recover the costs of providing services.

EFFECTIVE DATE: January 27, 1988.

FOR FURTHER INFORMATION CONTACT: Fred S. Mullins, Cotton Division, AMS, USDA, Washington, DC 20090-6456, (202) 447-2145.

SUPPLEMENTARY INFORMATION: An interim rule which detailed the increased user fees for cotton classification, testing, and standards was published in the *Federal Register* on September 18, 1987 (52 FR 35215). This interim rule stated the reasons for revising classification user fees due to a recent amendment on August 20, 1987, to section 3a of the Cotton Statistics and Estimates Act (7 U.S.C. 473a) and the need to increase other user fees to recover, as nearly as practicable, the costs of providing these services. A 45-day comment period was given to interested persons to submit their views on the proposed user fee increases. The comment period ended November 2, 1987, with no comments having been received. Therefore, based upon the above the interim rule is adopted as a final rule as originally published.

This rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "non-major" since it does not meet the criteria for a major regulatory action as stated in the Order.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) The fee increases merely reflect only a modest increase in the cost-per-unit currently borne by those entities utilizing the services; (2) the cost increases will not affect competition in the marketplace; (3) the amounts of the increase in fees are needed to continue to provide services at the levels desired by the industry; and (4) the use of the services is voluntary. The secretary is authorized by statute to recover the costs of the services.

The information collection requirements contained in the rule have been previously approved by the Office of Management and Budget and assigned OMB control numbers under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because a sufficient comment period was included in the interim rule with no comments received, the interim rule is adopted as a final rule without change, and no useful purpose would be served by such a delay.

List of Subjects

7 CFR Part 27

Cotton classification, Samples, Micronaire, Spot markets.

7 CFR Part 28

Cotton samples, Standards, Cotton linters, Grades, Staples, Market news, Testing.

7 CFR Part 61

Cottonseed, Chemists, Samplers, Grades.

Accordingly, the interim rule amending 7 CFR Parts 27, 28, and 61 which was published at 52 FR 35217-35221 on September 18, 1987, is adopted as a final rule without change.

Dated: January 22, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs,
[FR Doc. 88-1652 Filed 1-26-88; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children, Funding Formula

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the WIC Program Regulations concerning the formula through which the Department shall allocate funds for administrative and program services to State agencies. The formula prescribed by this rule differs from the one currently in use. In accordance with this rule, the Department shall henceforth allocate funds for administrative and program services to State agencies on the basis of previous fiscal year funding levels and on the basis of the number of participants served. The intent of this formula is to preserve a reasonable measure of funding stability while promoting funding levels necessary to provide equivalent service to participants. With the administrative and program services funds tied more closely to participation, the Department expects that the formula will more equitably allocate available funds to meet the administrative and program services costs in State agencies and will remove disincentives for achieving economies in food costs that allow service to greater numbers of participants.

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ronald J. Vogel, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 407, Alexandria, VA 22302. (703) 756-3746.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12291, and has been classified to be *not major*. The Department does not anticipate that this

rule would have an annual effect on the economy of \$100 million or more. This rule would not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Nor would this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to that review, the Administrator of the Food and Nutrition Service has certified that this rule does not have a significant economic impact on a substantial number of small entities. This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

The WIC Program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice published June 24, 1983 (48 FR 29114)).

Background

Statutory Requirements

The Department's authority to prescribe a WIC funds allocation formula is found in section 17 of the Child Nutrition Act (CNA) of 1966 (42 U.S.C. 1786), as amended. Section 17(i) requires the Department to " * * * divide, among the State agencies, the funds provided in accordance with this section on the basis of a formula determined by the Secretary." Legislative directives for the distribution of administrative and program services funds to State agencies are provided in section 17 (h)(1) and (h)(2). Section 17(h)(1) reads in part. "The Secretary shall make 20 percent of the funds provided under this section each fiscal year (other than funds expended for evaluation and pilot projects under subsection (g) of this section) available for State agency and local agency costs for nutrition services and administration." This paragraph further stipulates that not less than one-sixth of the funds State agencies expend for nutrition services and administration are to be used for nutrition education

activities, unless a State agency requests authorization to spend less than the required amount and provides documentation that funding from other sources will be used for such activities. Section 17(h)(2) further requires the Secretary to " * * * allocate funds for nutrition services and administration to each State agency on the basis of a formula determined by the Secretary, which shall include a minimum amount, and which shall be designed to take into account the varying needs of State agencies based on factors such as the number of local agencies and the number of persons participating in the program at those agencies." In summary, the CNA directs the Department to allocate to State agencies 20 percent of the total Federal funds available for the WIC Program (minus funds expended for evaluation and pilot projects under subsection (g)) for administrative and program services according to a formula that provides a minimum amount and that considers the varying needs of State agencies.

Current Funding Formula

On July 2, 1987, a final rule was published (52 FR 25182) that set forth the formulas for allocating both WIC food and administrative and program services funds. While this rule made revisions to the formula for allocating food funds, the rule did not make any changes to the existing administrative and program services funding formula. The current formula for allocating administrative and program services funds, in use since fiscal year 1984, provides funds in two ways. First, a guaranteed grant amount is calculated which is the lesser of: (a) 21 percent of a State agency's food grant, or (b) the State agency's ratio of administrative and program services funds to food funds allocated in the previous year, multiplied by the current year's food grant. Second, a discretionary fund is available for allocation by each Food and Nutrition Service (FNS) regional office. The purpose of the discretionary fund is to provide for the varying needs of State agencies. The amount of discretionary funds available to each regional office for allocation to its respective State agencies is determined based on each of its State agencies' ratio of administrative and program services funds to food funds from the previous fiscal year. The difference between the product of the State agency's ratio and its current year's food grant and the State's guaranteed administrative and program services grant represents the State's contribution to the regional discretionary fund. The sum of all

States' contributions forms the regional discretionary fund.

FNS regional offices determine the amount each State agency will receive of the discretionary fund. The underlying premise of these discretionary allocations by the regional offices is that their close working relationships with the State agencies afford them greater awareness of the State agencies' varying needs.

Regional offices have allocated discretionary funds using factors such as the State agency's ratio of administrative and program services funds to food funds from the previous year, administrative and program services cost per participant, service to high risk participants and funding for special projects. In fiscal year 1987, approximately 17 percent of total administrative and program services funds were awarded through the discretionary grant component. Nationally, however, most State agencies received the amount of discretionary funds they "contributed" to the regional fund, and only 3 percent of the total discretionary funds were actually redistributed to other State agencies.

Concerns About the Existing Formula

Establishing each State agency's administrative and program services funding level as a percentage of its food funding level has been a stable and straightforward method of funding. The Department is concerned, however, that this method may entail some inequity in the distribution of funds under the formula among State agencies and regions of the country.

There is a general recognition that the use of these ratios in calculating the grant amounts available for distribution to State agencies does not yield fully equitable results.

Additionally, the Department is concerned that the current formula is a disincentive to a State agency's reduction of food costs per participant. Such lower food costs permit service to a greater number of participants. However, under the current formula, State agencies must provide administration and program services for each additional participant with no increase in administrative funding.

• Alternative Formula Proposed

A proposed rule containing an alternative funding formula was published for comment in the *Federal Register* (52 FR 27005) on July 17, 1987. In the development of the proposed formula, the Department consulted with members of the WIC community.

particularly the National Association of WIC Directors (NAWD). Discussions with the NAWD representatives centered on the formulation of funding principles, the consideration of factors affecting administrative and program services costs, and the critique of specific formula options under development. These discussions proved to be pivotal in the design of the proposed formula, whose fundamental difference from the current formula was use of participation levels instead of ratios to food funds as a basis for allocating administrative and program services funds.

• *Description of the Proposed Formula*

The objectives of the proposed formula were to give all State agencies the opportunity to provide equivalent service to participants and equivalent management oversight and to remove existing disincentives to reducing food costs in order to serve more participants. To accomplish these objectives within the context of ongoing program operations, the Department proposed to implement change in funding levels gradually. Thus, the proposed formula would allocate funds to maintain previous funding levels while promoting a gradual movement toward a funding level that represents each State agency's "fair share", or parity, funding level. The purpose of the parity grant component was to reflect the funding levels State agencies would receive if all available administrative and program services funds were allocated primarily on the basis of participation. The Department proposed two methods for determining parity grant levels, both of which recognized the higher per participant costs associated with smaller participation levels. The fundamental difference between the two methods was that one (Option A) made no adjustment for differing salary costs among States, while the other (Option B) did.

The implementation of the formula was designed to ensure gradual movement toward the parity level. Each State agency would receive a stability funding level equal to the total amount received in the previous fiscal year provided that participation levels did not decrease. If FNS projected a decrease in participation for a State agency, that State agency would receive its previous year funding level decreased by an amount commensurate with the projected decrease in participation. The purpose of stability funding is to maintain a measure of funding stability from year to year, and most funds available for administrative and program services would be

allocated through this component of the formula. Any funds remaining after stability funding is satisfied would be allocated as residual funds on the basis of participation levels. State agencies could qualify for residual funds in two ways: (1) Projected participation increases over the levels of participation in the previous year, or (2) parity grant levels which exceeded stability funding levels.

Although the goal of the proposed funding formula was eventually to fund all State agencies at their parity grant levels, a two-pronged approach to residual funding was proposed to provide further encouragement to State agencies to increase participation levels. Thus, State agencies which otherwise might not qualify for residual funding under the parity grant component of the formula would still qualify for some additional funding if they could increase participation.

The final step under the proposed funding formula was to provide for discretionary funding by FNS regional offices. The Department proposed to retain the discretionary funding concept, which is part of the current formula, in order to allow some flexibility in the funding process for meeting the varying needs of State agencies. The Department proposed to accomplish this by subtracting 10 percent of each State agency's total grant (stability grant plus any residual funds for which the State agency qualified) and aggregating those amounts for all State agencies within each FNS region. The FNS regional office would then distribute the funds based on the needs of State agencies within the region.

• *Comments Received on the Proposed Formula*

A total of 234 letters were received which provided comments on the proposed formula. The commentors represented 48 State agencies, 155 local agencies, and 31 interested groups. The Department considered the comments received in formulating this final rule. Following is a discussion of the major issues raised by commentors in response to the proposed rule for allocating WIC administrative and program services funding.

General Issues: Formula Concepts and Concerns

• *Support for the Proposal*

A total of 228 commentors provided comments supporting or opposing the proposal to revise the formula used to allocate funds for administrative and program services. Basic approval or disapproval could not be determined for

six comment letters received. Of the 228 comment letters, 74 percent generally supported the proposal. Their support was conditional on one or more recommended modifications; 103 commentors limited their comments to support for the adoption of either Option A or Option B as the preferred method for determining parity grants. Sixty commentors (26 percent) opposed the proposed rule in its entirety. The common elements of the objections raised by these commentors include the need for additional research into the costs of administering the WIC Program, the complexity of the proposal and the perception that certain State agencies or regions of the country would be disadvantaged by the adoption of the proposed formula.

• *Participation-Based Funding*

A smaller number of commentors (43) specifically addressed the concept of participation-based funding. Of this number, 71 percent supported the concept, and 29 percent opposed. Those who opposed the use of participation as a basis for allocating administrative and program services funds cited problems which they believe are inherent in this funding approach, such as the lack of predictability in funding levels from year to year and reduced per participant funding without significant increases in funds appropriated by Congress (since participation-based funding would be expected to promote increases in participation). While such outcomes could result from funding based solely on participation, most of the funds will, in fact, be allocated on the basis of prior year funding levels. However, the ultimate objective of the new funding formula is to provide funds primarily on the basis of the number of participants served. The Department continues to believe that this is a fair method of allocating funds.

A related issue raised by 26 commentors was the concern that participation-based funding may encourage some State agencies to serve more eligible persons by reducing the quantity and quality of food packages. With regard to food cost economies, it is the Department's intent that State agencies will review current policies and practices on food package design, food delivery systems, and vendor selection and monitoring practices to determine potential cost-saving measures. However, State agencies should not contemplate measures detrimental to the nutritional integrity of food packages. Any changes to food packages will be reviewed carefully by FNS in accordance with guidelines

outlined in FNS Instruction 804-1, *WIC Program—Food Package Design: Administrative Adjustments and Nutrition Tailoring*. If FNS determines that a State agency has improperly reduced the nutritional content of food packages such State agency will risk the imposition of funding sanctions, as described in Section 246.19(a)(2) of the WIC Program Regulations.

• *Gradual Change*

A basic feature of the proposed formula was the gradual change from funding levels determined by the current formula to funding levels which are primarily based on participation. Most commentors who addressed this feature of the proposal supported the need for gradual change, and some commentors recommended consideration of placing a cap on the amount of change allowed for funding levels from one year to the next. Other commentors were opposed to limiting the amount of change in funding levels because this would impede the movement toward parity funding. While recognizing the concern expressed on behalf of State agencies which will receive a lesser share of funding under the new formula, the Department believes that the new formula fairly balances the need for funding stability with the need to promote funding which emphasizes equivalent service to participants throughout the country. The first priority under the new formula will be to allocate funds on the basis of State agencies' previous year grant levels; it is only after stability funding is fully satisfied that any remaining funds will be allocated on the basis of participation. Given the fact that most funds available for allocation for administrative and program services will be allocated through the formula's stability component, the Department does not believe that further restrictions on changes to funding levels are warranted.

• *Interaction with the Food Funding Formula*

Thirty-nine commentors, representing a broad spectrum of State agencies and interested groups, expressed concern that the objectives of the proposed formula conflict with those of the formula by which food funds are allocated to State agencies. A new food funding formula which was published as a final rule in the *Federal Register* (52 FR 25182) on July 2, 1987, provides funding incentives to State agencies based on their service to participants who are at the greatest risk due to nutritional deficiencies or medical conditions. The objective of this funding policy is to encourage State agencies to

target benefits to eligible persons who are at the greatest nutritional risk and who therefore have a greater need for program benefits. However, the proposed administrative and program services funding formula would provide funding incentives to State agencies to increase participation without regard to the nutritional risk status of the additional participants. Since the number of participants that a State agency can serve is directly related to the cost of the food packages provided to participants, lower food expenditures result in the ability to serve more people. However, commentors pointed out that high risk participants, particularly infants, tend to require more expensive food packages, and thus State agencies which serve a greater percentage of high risk participants are likely to have higher per participant food expenditures. Commentors contended that a State agency could be rewarded under the food formula for targeting benefits to high risk participants and penalized under the proposed administrative and program services funding formula for having higher per participant food expenditures.

The Department agrees that the two formulas differ with regard to funding objectives. In an effort to determine whether these differences could produce the conflict predicted by commentors, the Department conducted computer simulations of the two formulas with results projected into fiscal year 1989. Based on these simulations, it appears that well-targeted State agencies would receive slightly less in funding compared to State agencies which are less well-targeted. Although the reduction of administrative and program services funding for well-targeted State agencies was slight (less than 1 percent reduction of the administrative grant per participant), the Department believes that it is prudent to provide a targeting incentive in the administrative and program services funding formula. Therefore, a specific targeting factor has been incorporated into the final formula which will reward State agencies for service to high risk participants. In doing so, the Department reaffirms the important program goal of targeting WIC benefits to those in greatest need.

Stability Funding

Forty-two commentors addressed issues related to the stability component of the proposed funding formula. Six commentors supported the proposal as stated or with some modifications; 36 commentors opposed the provision. Those who opposed objected to the proposed methodology of reducing a

State agency's previous year funding level by an amount commensurate with projected participation decreases. Commentors stated that stability funding should at least equal the amount of funds received in the previous year. A majority of the opposing commentors also recommended that an adjustment for inflation should be added to the previous year grant levels when computing stability grants under the new formula.

The Department concurs with the recommendation that stability funding should equal the previous year's total administrative and program services funding level with no reductions for projected participating decreases. The State agency's stability funding level is based on a known, objective value—the preceding year administrative and program services funding level—although the exact amount of that level may not be final until well into the succeeding fiscal years. Preclusion of an adjustment for projected decreases in participation will improve predictability of funding levels for the State agencies. An appropriate change has been incorporated into the final rule. However, the Department decided not to include an inflation adjustment for determining stability grants. The Department's reasoning on this matter is that the introduction of an inflation factor into the formula would severely limit the amount of funds available for residual funding, thus hampering the movement toward parity funding.

Residual Funding

• *Projected Participation*

Due to the revised method of determining stability funding as discussed in the preceding paragraph, use of projected participation in the final rule is limited to calculating the amount of residual funding for which a State agency qualifies. The Department proposed to project participation by dividing each State agency's current fiscal year food grant by its food expenditures per participant (FEP) averaged over the most recent closed-out 12 months. That quotient would be divided by 12 to arrive at a monthly participation level. The FEP is derived from participation and food expenditures reported by State agencies to FNS on the Form FNS-498, WIC Monthly Financial and Program Status Report. To account for increased costs in the current fiscal year, the FEP would be increased by the same base anticipated rate of inflation that would be applied in determining current year food grants.

A total of 38 commentors addressed issues related to projected participation. Half of these commentors generally supported the concept of projecting participation, although most suggested modifications to the proposed methodology. The other half opposed the use of projections, and many recommended, instead, the use of average monthly participation levels from the previous year. State agencies which have initiated or plan to initiate infant formula rebate programs or other competitive bidding systems designed to reduce food costs were particularly concerned about this issue.

Commentors generally felt that the proposed methodology would result in inaccurate projections. Specific recommendations to improve the accuracy of the projections included using more recent data to calculate each State agency's FEP and adjusting the FEP for prospective food cost savings and for the additional cost of serving high risk participants.

While acknowledging certain limitations to the proposed method of projecting participation, the Department believes that it represents a fair and reasonable approach to forecasting participation. With the exception of the computations used to determine an inflation adjustment for FEP, the Department intends to project participation as proposed. The Department's reasons for retaining the proposed methodology for projecting participation are summarized below.

- The projections are based on the most objective information available—final (closed-out) food expenditure and participation data, as reported by State agencies, and current year food grant levels. Use of data that is not closed-out could result in preliminary FEP's that may be inaccurate.

- The use of a 12 month average of final (closed-out) food expenditures and participation captures the full picture of State agency activity regarding participation and food expenditures. Use of a shorter time period to average food expenditures and participation could result in an average FEP that reflects temporary or seasonal fluctuations in food prices or participation levels.

- Prospective consideration of food cost savings or other action that might increase participation (e.g., elimination of sales tax on WIC food purchases) would introduce an unacceptable level of unreliability into participation projections. The projection methodology adopted in this rule will recognize participation increases due to cost savings actually achieved. While there will be a brief time lag between actual participation increase and the

subsequent influx of administrative funding to manage these increases, the Department believes this is a more prudent and objective manner in which to allocate administrative resources.

- A specific targeting factor has been incorporated into the parity grant component of the formula. Addition of a specific targeting factor more clearly reinforces the program goal of targeting benefits to high risk participants.

One change that will be made concerns the calculations of the inflation factor to be applied to each State agency's average FEP. As several commentors correctly pointed out, the rate of inflation used should match the period of time used to calculate the FEP through the current fiscal year. Therefore, an inflation factor will be applied to the FEP which will accomplish that objective.

•Residual Funding Based on Projected Participation Increases

As proposed, State agencies may qualify for residual funds based on participation increases projected by FNS. The amount of residual funds would be determined by applying a multiplier to the projected increase in participation from the previous year. The multiplier would equal an administrative expenditure per participant (AEP) averaged from the lowest quartile of AEP's from the previous fiscal year.

Eighteen commentors addressed this aspect of the proposed funding formula. Four commentors opposed the allocation of residual funds based on projected participation increases. These commentors stated that all residual funds should be allocated only on the basis of the parity grant component. Another issue that concerned several commentors was the proposed method of comparing projections from year to year as a basis for determining changes in participation levels. Commentors felt that without some comparison to actual average annual participation levels beyond the first year, the projections would lose any similarity to actual participation levels. A third issue addressed was the proposed use of an average AEP drawn from the lowest quartile of AEP's. In general, commentors felt that it was not equitable to use the same multiplier for all State agencies because their costs in serving each additional participant vary. The position taken was that the smallest State agencies, in particular, would not be adequately compensated for their comparatively higher expenditures on a per participant basis.

The Department has retained this provision of the new funding formula as proposed. The Department believes that

it is appropriate to recognize efforts undertaken by higher cost State agencies to reduce food costs and increase participation. Many such State agencies would not otherwise receive residual funds through the parity component of the formula. Regarding the concern about comparing projections from year to year, this method will ensure that any changes in participation or food expenditures per participant not accounted for in the previous year's projections will be considered in the current year's projections. Also, it should be noted that projected participation decreases from one year to the next year will not affect funding levels as this procedure was deleted due to the revised method of determining stability grants.

Regarding the concern that the use of one standard AEP multiplier will not adequately compensate all State agencies for the cost of serving additional participants, the Department is reluctant to make additional adjustments. To do so would reduce the amount of residual funds available to State agencies based on the parity grant component of the new formula. This would considerably slow the movement toward fair share funding based on participation, which is the ultimate objective of the new formula.

•Residual Funding Based on Parity Grant Determinations

As proposed, the purpose of the parity grant component of the new funding formula is to reflect "fair share" funding levels for State agencies based primarily on participation. Parity grant calculations provide another means by which State agencies may qualify for residual funding; the difference between the stability funding level and the parity funding level equals the amount of residual funds for which a State agency qualifies. The Department offered two approaches to determining parity funding levels, Option A and Option B. Option A would provide funds on the basis of a per participant rate. Option B would provide funds on the basis of a constructed salary budget which computes the number of State and local staff according to staff to participant ratios and salaries paid within the State; the balance of funds would be paid out on a flat administrative grant per person. Both options would recognize the higher costs associated with smaller participation levels on a per participant basis.

A total of 191 commentors addressed the proposed options of determining parity grants. Of this number, 119 (62 percent) supported Option A, 35 (18 percent) supported Option B, and 37 (19

percent) opposed both options. The majority of commentors supporting Option A were from one region of the country; over two-thirds of the commentors represented one State from that region. Similarly, most supporters of Option B were from a single region, and those opposing both options most frequently represented 2 other regions of the country. The regional split in preferences for the proposed options, as well as for the new formula itself, is understandable due to the shift in funds allocations on a regional basis. The inclusion of salary costs was the most divisive issue. State agencies with higher than average salary costs tended to support Option B, while State agencies with lower than average salary costs supported Option A.

The Department has selected a modified Option A as the method used to determine parity grant levels. A number of factors and issues were considered in reaching this decision. The Department considered the relative merits of the methodologies used in both options, exclusive of the controversy surrounding the use of salary costs as a factor in the formula. Compared to Option A, the methodology used in Option B had several drawbacks. First,

the formula was more complex. A second and perhaps more important consideration was the concern raised by commentors regarding assumptions used to determine staffing levels at the local level. Ultimately, the Department concluded that Option A provided a more objective means of allocating funds based on participation.

However, the commentors supporting Option B had valid reasons for recommending the consideration of salary costs in determining parity grant levels. In addition, some commentors pointed out the need to consider the additional costs of serving high risk participants. Taking all of these arguments into consideration, the Department has revised the proposed Option A method of determining parity grant levels to include factors which recognize differential salary costs among State agencies and the relative success in targeting benefits to high risk participants.

Parity grant levels will be computed in 2 parts: first, 80 percent of available administrative and program services funds will be allocated on the basis of administrative grant per participant (AGP) rates adjusted for caseload size as proposed in Option A; and second,

the remaining 20 percent of available funds will be allocated on the basis of salary and targeting factors. The salary and targeting factors will be determined as follows:

- (1) Each State agency's average annual salary level will be indexed to the national average salary;
- (2) Each State agency's share of imputed priority I participants compared to its total average monthly participation level will be indexed to the national average share of imputed priority I participants;
- (3) Each State agency's salary index and targeting index will be added together and multiplied against its projected participation level; and
- (4) Each State agency's share of the national total determined in step 3 will be determined and then multiplied by 20 percent of the total amount of funds available for administrative and program services.

Following is an example showing the calculations used to determine the amount of funds a State agency would receive based on the salary and targeting factors.

Step 1:

$$\frac{\text{State A average salary (\$25,000)}}{\text{National average salary (\$20,000)}} = \text{State A salary index (1.25)}$$

Step 2:

$$\frac{\text{State A ratio of priority I participation (.50)}}{\text{National ratio of priority I participation (.40)}} = \text{State A targeting index (1.25)}$$

Step 3:

$$(\text{State A salary index (1.25)} + \text{State A targeting index (1.25)}) \times \text{State A projected participation (22,000)} = \text{State A salary and targeting factor (55,000)}$$

Repeat this step for all State agencies to arrive at a National total (7,000,000)

Step 4:

$$\frac{\text{State A (55,000)}}{\text{National total (7,000,000)}} \times 20 \text{ percent of total administrative funds (74,000,000)}$$

State A funds for Salary and Targeting = \$581,428

Each State agency's parity grant level will equal the funds generated by these computations plus the funds generated using the size-adjusted AGP rates. Further discussions of comments received on these cost factors follow:

• *Use of Size-Adjusted Factors in Parity Component*

Although the Department lacked complete information on the effect of the economy of scale phenomenon on WIC administrative and program services costs, a methodology was proposed to account for the higher participation costs associated with small participation levels. The use of size-adjusted factors in the parity grant component was proposed in order to avert severe reduction in funding levels for State agencies with average monthly participation levels under 15,000.

Thirty-one commentors addressed the economy of scale issue and the proposed use of size-adjusted factors in the new funding formula. There was unanimous support among these commentors for recognizing the special funding needs of State agencies with average monthly participation levels below 5,000; there was less agreement about the proposed method used to compensate the higher per participant costs of these State agencies or that State agencies with participation levels over 5,000 require special consideration. Although a majority of commentors (58 percent) agreed with the proposed methodology of using size-adjusted factors based on reported administrative expenditures per participant (AEP), most commentors suggested modifications to the approach. Commentors most frequently suggested that the first size band containing State agencies with participation levels up to 5,000 should be broken into smaller size bands containing either the first 500 or 1,000 participants. Other commentors opposed the use of size-adjusted factors as a means of compensating State agencies with small participation levels; some recommended that State agencies with fewer than 5,000 participants should be funded outside the formula through the use of minimum grants. Other commentors criticized the data used or the methods by which the size-adjusted factors were determined. Several commentors pointed out that the relative size and number of local agencies affect

a State agency's AEP as significantly as the overall participation level.

In response to suggestions to adjust the first size band downward, the Department explored several possible adjustments using the same database used to determine the proposed size-adjusted factors (FY 1986 final AEP's). However, none of the proposed revisions provided the intended effect of appropriately increasing compensation for the smallest State agencies without inappropriately reducing compensation for the larger State agencies. Finally, the Department concluded that it is not in the best interest of the Program to reduce the parity funding levels for the larger State agencies which serve the majority of WIC participants. The relatively small amounts of additional compensation sought by the smallest State agencies to meet unfunded legitimate costs of operations can be attained more easily through negotiations with FNS regional offices for discretionary funds. This would not be the case for larger State agencies whose additional funding needs resulting from reducing parity grant levels could exceed the amount of available discretionary funds. The Department considered the comments concerning the relative size and number of local agencies but concluded that it would not be appropriate to include this factor in the formula, since it is under the control of the State agencies. Further, inclusion of the numbers of local agencies in the formula would be a disincentive for State agencies to economize administration by consolidating services.

For these reasons, the proposed size-adjusted factors have been retained in the final funding formula as proposed. The Department believes that the use of size-adjusted factors in the new funding formula adequately accommodates the needs of smaller State agencies which have higher than average administrative expenditures on a per participant basis. On a periodic basis, the Department will review the actual costs differences between the size bands to determine whether the size-adjusted factors need to be revised.

• *Adjustments to Parity Component for Salary Costs*

The Department considered the issue of salary costs separately from the choice of options used to determine

parity grant levels. In proposing Option B as one approach to account for salary costs, the Department specifically requested comments on the appropriateness of including salary costs in the funding formula and suggestions of a methodology. Ninety-two comments were received on the issue of including salary costs in the funding formula. Of this number, 24 commentors (26 percent) favored the inclusion of salary costs in the formula, 7 commentors (8 percent) opposed the inclusion of salaries for theoretical reasons, and 61 (67 percent) commentors opposed the inclusion of salaries for practical reasons, citing concerns about the proposed salary database. Those who favored the consideration of salary costs in the funding formula stated that salary costs significantly affect administrative and program services costs in the WIC Program and are not under the control of State agencies. Other commentors opposed the use of a salary factor in the formula on the grounds that this would represent an unwarranted departure from FNS funding policies for food and nutrition programs. These commentors also believed that it is unfair to certain regions in the country to include salary costs without also including other factors affecting administrative and program services costs, such as rurality and geographical factors. Finally, those commentors who opposed the inclusion of salary costs on practical grounds faulted the database that the Department proposed to use in determining average salary levels for WIC staff. As described in the preamble to the proposed rule, the database for the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands would be supplied by the Bureau of Labor Statics (BLS). The BLS data represents the most recent average annual salaries for State and local government workers as reported by each State's employment security agency. Commentors felt that the BLS averages are not appropriate for WIC staff who tend to receive higher than average salaries. They also objected to the age of the database which reflected salaries paid two years ago.

The Department recognizes that this issue represents one of the most controversial aspects of the proposed

rule. The Department believes that strong sentiments expressed by commentators on the issue tend to reflect concern about the appropriateness of shifting funds among State agencies due to inclusion of salary costs in the formula. Notwithstanding these concerns, the Department continues to believe that salary costs represent the most significant factor in WIC administrative and program services costs. Based on the budgeted expenditures submitted by State agencies for Fiscal Year 1987, a national average of 72 percent of all administrative and program services funds were budgeted for salaries and fringe benefits. Furthermore, a State agency which must pay higher than average salaries is unlikely to be able to hire as many staff as a State agency with lower salaries. Thus, State agencies which must pay the higher salary levels due to prevailing economic conditions within the State may be understaffed, and WIC participants may receive reduced quality of service.

Regarding concerns expressed about the proposed database for salary costs, the Department notes that a disproportionate number of commentators who raised these concerns were from one region of the country and almost all of these commentators represent one State in that region. While recognizing the concerns raised by these commentators, the Department continues to believe that the BLS data represents a reliable national database. As described in the preamble to the proposed rule, the BLS database represents a virtual census of private and public employment and wage data in the United States.

Given the influence of salary costs on WIC administrative and program services and the access to a reliable national database, the Department concludes that it would be incongruous to exclude from the formula a factor which recognizes the differential salary costs of State agencies. Therefore, the formula contained in this final rule includes a factor which recognizes the different salary costs among State agencies. The most recent data available from BLS will be used for the 50 States, the District of Columbia, Puerto Rico and the Virgin Islands. The proposed use of a salary level for Indian State agencies which equals the salary of a grade 9, step 1 in the Federal government's general schedule pay scale will be retained. The salary level used for Guam will equal the BLS salary level used for Hawaii. For most years, these salary levels will reflect average salaries paid two years prior to the

applicable fiscal year for which funds are allocated.

• Rurality and Geographic Considerations as Cost Factors

A total of 24 commentators addressed issues related to rurality and geographical considerations as affecting administrative and program services costs. Almost all of these commentators stated the new funding formula should include both factors because of the significant impact on the costs of serving WIC participants. Commentators did not, however, suggest any national database to be explored in determining an objective and verifiable method of accounting for costs associated with these factors. Because the Department was unable to allocate objectives and verifiable data on these factors which could be meaningfully applied to WIC costs, these factors were not included in the final rule.

Discretionary Funding

Sixty-four commentators addressed the discretionary funding provision of the proposed funding formula. Although almost all of these commentators supported the continuation of discretionary funding by FNS regional offices, a majority of the commentators criticized the proposed methodology for determining each State agency's contributions to its respective regional discretionary "pot." A substantial number of commentators who opposed the proposed methodology expressed concern that a 10 percent contribution of each State agency's total grant level to the regional discretionary fund could result in a final guaranteed grant level for some State agencies equalling only 90 percent of the previous year's grant level. Other commentators representing large State agencies stated that discretionary funding perpetuates funding inequities and penalizes large State agencies whose contributions to the discretionary pots are used to provide additional funding to smaller State agencies. The most frequent suggestion for improving this provision of the proposed funding formula was to provide guidelines for discretionary allocations by regional offices. While most commentators suggested the establishment of broad guidelines, some commentators recommended the use of specific factors in the guidelines. Examples of suggested factors included funding for movement toward parity grant levels, service to high risk participants, rurality and geographic considerations, and breast-feeding initiatives. Many commentators also suggested that the amount of funds made available for discretionary funding should be reduced from 10 percent to 5

percent or less of State agencies' total funding levels.

The Department has adopted the suggestion to provide guidelines to regional offices in the allocation of discretionary funds. Guidelines will be established prior to each fiscal year's funding allocation. The establishment of annual guidelines through normal policy communication channels with the regional offices rather than through the regulations is intended to permit a greater responsiveness to national program goals which may change over time.

The Department considered reducing the amount of funds available for discretionary funding in response to comments received. However, the Department has retained the proposed provision to allocate 10 percent of the total amount of administrative and program services funds available for allocation. This provision already represents a reduction in discretionary funding amounts used under the current funding formula. In fiscal year 1987, 17 percent of the total administrative and program services funds were allocated to State agencies as discretionary funding.

Summary of Revisions Made in the Final Rule

A summary of revisions made to the proposed rule which have been incorporated into the final rule is provided below.

PROVISION OF NEW WIC ADMINISTRATIVE AND PROGRAM SERVICES FUNDING FORMULA—

Provision	Proposed rule	Final rule
Stability Funding.....	Previous year grant level adjusted for projected participation decreases.	Previous year grant level.
Parity Grant Component.	Option A based on a grant per person; or Option B based on a constructed salary budget.	Option A, modified to include salary and targeting factors.
Discretionary funding.	Ten percent of final grant level subtracted and allocated by FNS regional offices based on State agency needs.	Same ten percent level used. Allocations will be based on national guidelines established annually and on State agency need.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition.

Nutrition education, Public assistance programs, WIC, Women.

For the reason set forth in the preamble, 7 CFR 246.16, is amended by revising paragraph (c) to read as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN

1. The authority citation from Part 246 continues to read as follows:

Authority: Sec. 341–353, Pub. L. 99–500 and 99–591, 100 Stat. 1783 and 3341 (42 U.S.C. 1786); Sec. 3, Pub. L. 95–627, 92 Stat. 3611 (42 U.S.C. 1786); Sec. 203, Pub. L. 96–499, 94 Stat. 2599; Sec. 815, Pub. L. 95–37, 95 Stat. 521 (42 U.S.C. 1786).

2. In § 246.16, paragraphs (c)(3)(i) and (c)(3)(ii) are revised, and new paragraph (c)(3)(iii) is added to read as follows:

§ 246.16 Distribution of funds.

(c) * * *

(i) *Allocation of stability funds.* To the extent funds are available, and subject to the provisions of paragraph (c)(3)(iii) of this section, each State agency shall receive an amount equal to the final amount of funds received for administrative and program services in the preceding fiscal year.

(ii) *Allocation of residual funds.* Subject to the provisions of paragraph (c)(3)(iii) of this section, any funds remaining available for allocation for administrative and program services after the stability allocation required by paragraph (c)(3)(i) of this section has been completed shall be allocated as residual funds.

(A) FNS shall allocate residual funds to each State agency according to a method that determines the higher of an amount equalling the stability funds which are allocated in accordance with paragraph (c)(3)(i) of this section plus an amount commensurate with the projected increase in participation from the preceding year as determined by FNS or the amount of funds generated by the formula set forth in paragraph (c)(3)(ii)(B) of this section.

(B) The formula shall calculate the amount of funds each State agency would receive if all available administrative and program services funds were allocated on the basis of the average monthly participation levels, as projected by FNS. Each State agency's projected participation level shall be adjusted to account for the higher costs associated with small participation levels, differential salary levels relative to a national average salary level, and service to Priority I participants relative

to the national average service to Priority I participants. The formula shall be adjusted to account for these costs factors in the following manner: 80 percent of available funds shall provide compensation based on rates which are proportionately higher for the first 15,000 or fewer participants, as projected by FNS, and 20 percent of available funds shall provide compensation based on differential salary levels and service to Priority I participants, as determined by FNS.

(iii) *Discretionary funds.* Each State agency's final administrative and program services grants shall be reduced by 10 percent, and these funds shall be aggregated for all State agencies within each FNS region to form a discretionary fund. FNS shall distribute these funds according to guidelines which shall be established nationally each year and which shall consider the varying needs of State agencies within the region.

Dated: January 22, 1988.

Anna Kondratas,

Administrator.

[FR Doc. 88–1655 Filed 1–26–88; 8:45 am]

BILLING CODE 3410–30–M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 87–186]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations governing the interstate movement of cattle because of brucellosis by setting forth the criteria used for classifying a state as two different brucellosis areas and classifying the state of Virginia, except for Clarke County, as Class Free. We have determined that, with the exception of Clarke County, this state now meets the standards for Class Free status. Classifying the state of Virginia, except for Clarke County, as Class Free relieves certain restrictions on the interstate movement of cattle from all portions of the state except Clarke County. The criteria for classifying a state as two different brucellosis areas has been and is used to make these decisions under the regulations.

DATES: Interim rule effective: January 27, 1988. We will consider only comments

postmarked or received on or before March 28, 1988.

ADDRESSES: Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Specifically refer to Docket No. 87–186. You may review these comments at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Senior Staff Veterinarian, Domestic Programs Support Staff, Veterinary Services, APHIS, USDA, Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301–436–5965.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations in 9 CFR Part 78 (referred to below as the regulations) provide a system for classifying states or portions of states according to the rate of *brucella* infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for states or areas with the highest rate of brucellosis, with Class B and Class A in between. Restrictions are more stringent for the interstate movement of cattle from Class A than for Class Free states or areas; more stringent for interstate movement from Class B than from Class A states or areas, and so on.

The basic standards for the different classifications of states or areas entail maintaining: (1) A cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) a rate of infection in the cattle population (based on the percentage of brucellosis reactors found in the Market Cattle Identification (MCI) program—a program of testing at stockyards, farms, ranches, and slaughtering establishments) not to exceed a stated level; (3) a surveillance system that includes testing of dairy herds, participation of all slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection, including herds adjacent to infected herds and herds

from which infected animals have been sold or received, and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) minimum procedural standards for administering the program.

In most instances, brucellosis classification is by state. However, because rates of infection may vary widely in different parts of a state, we established, in a document published in the *Federal Register* on December 13, 1982 (47 FR 55636-55656), that a state may be divided into two areas for brucellosis classification, with movement between the two areas controlled by the state. To reflect current policy, we are including in the regulations the criteria for dividing one state into two brucellosis classification categories. These criteria require that a state have both legal authority and practical means (geographic, economic, and personnel) for enforcing intrastate movement of certain animals between the two areas. Also, each area must meet the standards for the classification being sought.

More specifically, the Administrator of the Animal and Plant Health Inspection Service may grant approval for two classification areas within a state in accordance with the following criteria: (1) The state must have legislative and regulatory authority for maintaining separate areas; (2) The state must have resources committed to enforcing the different requirements in each area; (3) The state must have an effective method for monitoring and controlling movement of cattle across the boundary between the two areas; (4) The state must define the boundary between the two areas by county lines or by recognizable geographic features, such as a river or a highway; and (5) Each area of the state must meet the standards for the brucellosis classification for which it is applying.

Virginia now meets the criteria set forth above. We are therefore reclassifying the state, with the exception of Clarke County, as Class Free.

Before the publication of this interim rule, the entire state of Virginia was classified as a Class A state because of the herd infection rate and the MCI reactor prevalence rate. However, a review of the brucellosis program establishes that, excluding Clarke County, Virginia should be reclassified as Class Free. Because of the presence of a quarantined herd in Clarke County, that county retains its Class A status.

To attain and maintain Class Free status, a state or area must: (1) Remain

free from field strain *Brucella abortus* infection for 12 consecutive months or longer and; (2) must maintain a 12-consecutive-month MCI reactor prevalence rate not to exceed one reactor per 2,000 cattle tested (0.050 percent). With the exception of Clarke County, which remains classified as Class A, the state of Virginia now meets the criteria for classification as Class Free.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this interim rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Virginia, except for Clarke County, reduces certain testing and other requirements governing the interstate movement of cattle from all portions of Virginia, except for Clarke County. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis free herds moving interstate are not affected by this change. We have determined that the change in brucellosis status effected in this interim rule will not significantly affect market patterns and will not have a significant economic impact on the small cattle operations for which certain restrictions are being relieved.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Emergency Action

James Glosser, Acting Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary

restrictions on the interstate movement of cattle from the state of Virginia, excluding Clarke County.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 for making this interim rule effective less than 30 days after publication of this document in the *Federal Register*. We will consider comments postmarked or received within 60 days of publication of this interim rule in the *Federal Register*. Any amendments we make to this interim rule as a result of these comments will be published in the *Federal Register* as soon as possible after the close of the comment period.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, we are amending 9 CFR Part 78 as follows:

PART 78—BRUCELLOSIS

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.40 [Amended]

2. In § 78.40, the term "Deputy Administrator" is changed to read "Administrator" each time it appears.

3. Section 78.40 is amended by adding a sentence after the first sentence to read as follows: "The Administrator may approve the division of a state into two brucellosis classification areas upon finding that: (a) The state has legislative and regulatory authority for maintaining separate areas; (b) The state has committed resources to enforcing the different requirements in each area; (c) The state has an effective method for monitoring and controlling movement of

cattle across the intrastate boundary; (d) The state has defined the intrastate boundary by county lines or by recognizable geographic features, such as rivers and highways; and (e) Each area of the state meets the standards for the brucellosis classification requested."

§ 78.41 [Amended]

4. Section 78.41, paragraph (a), is amended by adding "Virginia (except Clarke County)," after "Virgin Islands".

5. Section 78.41, paragraph (b) is amended by adding "(Clarke County)" after "Virginia".

Done in Washington, DC, this 22nd day of January, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-1651 Filed 1-26-88; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

Unsafe and Unsound Banking Practices

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule; correction.

SUMMARY: This document corrects five of the cross references appearing in § 337.4(h), as published on page 47387 of the December 14, 1987 edition of the Federal Register (52 FR 47387).

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Senior Attorney, Legal Division, (202) 898-3730, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Accordingly:

§ 337.4 [Corrected]

1. In the first column, in paragraph (h)(1), in the fourth line from the bottom of the page, "paragraphs (h)(1)(ii) and (h)(1)(iii)" should read "paragraphs (h)(2) and (h)(3)."

2. In the second column:

a. In the next to the last line of paragraph (h)(1), "paragraphs (h)(1)(ii) and (h)(1)(iii)" should read "paragraphs (h)(2) and (h)(3)."

b. In paragraph (h)(2), fifth line, "paragraph (h)(1)(ii)" should read "paragraph (h)(1)."

c. In paragraph (h)(3), fourth and fifth lines, "paragraph (h)(1)(i)" and "paragraph (h)(2)(ii)" should read "paragraph (h)(1)" and "paragraph (h)(2)" respectively.

Dated: January 22, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-1621 Filed 1-26-88; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 108 and 129

[Docket 25502; Amdt. Nos. 108-5 and 129-16]

Airplane Operator and Foreign Air Carrier Security Rules; Correction

January 21, 1988.

AGENCY: Federal Aviation Administration.

ACTION: Final rule; request for comments; correction.

SUMMARY: FAA is correcting errors in Amendment Number 129-15, Airplane Operator and Foreign Air Carrier Security Rule. In FR Doc. 87-29424, published Tuesday December 22, 1987, on page 48508, please correct the amendment number "129-15" to read "129-16".

FOR FURTHER INFORMATION CONTACT: Mr. Donnie Blazer, 202-267-8058.

Debbie King,

Acting Manager, Program Management Staff.

[FR Doc. 88-1565 Filed 1-26-88; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C-3064]

Albertson's, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: The Federal Trade Commission has set aside a 1981 consent order with Albertson's, Inc., thus removing the Commission's prior approval requirement because there no longer appears to be a trend toward concentration in the relevant market.

DATES: Consent Order issued April 21, 1981. Set Aside Order issued July 1, 1987.

FOR FURTHER INFORMATION CONTACT: FTC/S-3302, Eugene Kaplan, Washington, DC 20580. (202) 326-2636.

SUPPLEMENTARY INFORMATION: In the Matter of Albertson's, Inc., a corporation. The prohibited trade practices and/or corrective actions, as set forth at 46 FR 25289, are deleted.

List of Subjects in 16 CFR Part 13

Retail grocery stores, Trade practices.

[Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18]

Before Federal Trade Commission

Order Reopening and Setting Aside Order Issued on April 21, 1981

[Docket No. C-3064]

Commissioners: Daniel Oliver, Chairman, Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

In the Matter of Albertson's, Inc., a corporation.

On March 3, 1987, Albertson's, Inc. ("Albertson's") filed a "Petition To Reopen And Set Aside Consent Order" ("Request"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice. The Request asked the Commission to reopen and set aside the consent order issued on April 21, 1981 ("the order"). Albertson's Request was placed on the public record for thirty days, pursuant to § 2.51 of the Commission's Rules. No comments were received.

The complaint in this case was issued under section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act and alleged anticompetitive effects arising from Albertson's acquisition of Fazio's, the California Division of Fisher Foods, Inc., in July 1978. According to the complaint, the relevant product line in which to assess the acquisition was retail sales by retail grocery stores and the relevant geographic market was Los Angeles County and Orange County, California. The order prohibits Albertson's for a ten-year period from acquiring, without prior Commission approval, five or more retail grocery stores in fifteen designated states and certain other geographic areas. *Albertson's, Inc.*, 97 F.T.C. 343, 345, 347-348 (1981).

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be altered, modified, or set aside, in whole or in part, if the respondent makes a satisfactory showing that changed conditions of law or fact require the order to be modified or set aside. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows

that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4.

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are invited in petitions to reopen to show how the public interest warrants the requested modification. 16 CFR 2.51. To obtain review on this ground, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 24, 1984), at 2 ("Damon Letter"). For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, Docket No. C-2916, 101 F.T.C. 689, 692 (1983). Once such a showing of need is made, the Commission will balance the reasons favoring the modification requested against any reasons not to make the modification. *Damon Letter* at 2.

After reviewing Albertson's Request, the Commission has concluded that respondent has not made a satisfactory showing that changed circumstances require that the order be set aside. The only real change that respondent has shown is that there is no longer a trend toward concentration in the relevant market. That change by itself does not establish that there is no further need for the order.

The Commission has concluded, however, that it is in the public interest to reopen and set aside the order. Albertson's has shown that the prior approval requirements of the order impose costs on respondent and put it at a disadvantage with respect to its competitors who are not under similar restraints. This affirmative need to modify the order must be weighed against the need for continuing the order. The costs shown by Albertson's were foreseeable at the time respondent agreed to the order and would not ordinarily provide a sufficient basis to justify termination of the order. However, respondent has also demonstrated that there is no continuing competitive need for the order in the Los Angeles/Orange County market that was the focus of the Commission's complaint. The respondent has shown that the relevant market is relatively unconcentrated and that any trend toward concentration that may have

existed at the time the order issued appears to have been arrested. Accordingly, the reasons for setting aside the order outweigh the reasons for retaining the order.

The Commission has likewise concluded that it is in the public interest to set aside the prior approval requirements of the order with respect to the fifteen states and other geographic areas which are designated therein. The allegations of the complaint relate exclusively to the Los Angeles/Orange County market and with the setting aside of the primary relief, the ancillary relief should also be set aside.

Accordingly, it is ordered that this matter be, and it hereby is reopened and that the Commission's order issued on April 21, 1981, shall be set aside as of the effective date of this order.

By the Commission. Commissioner Bailey was recorded as voting in the negative.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-1561 Filed 1-26-88; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket No. C-2643]

The Commodore Corp.; Prohibited Trade Practices

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to reopen and vacate the order.

SUMMARY: The Commodore Corporation, a corporate respondent in the order in Docket No. C-2643, has petitioned the Federal Trade Commission to vacate a 1974 consent order issued against it concerning its mobile home owners warranty and warranty practices. This document announces the public comment period on the petition.

DATE: Deadline for filing comments in this matter is February 14, 1988.

ADDRESS: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. Requests for copies of the request should be sent to the Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Thomas D. Massie, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326-2982.

SUPPLEMENTARY INFORMATION: The order in Docket No. C-2643 was published at 40 FR 18979 on May 1, 1975. The petitioner, The Commodore

Corporation, manufactures mobile homes which are sold to the public through authorized dealers. Petitioner seeks to have the order vacated in its entirety. The order requires Commodore to offer a warranty that describes the identity and address of the warrantor, the nature and extent of the warranty offered, the remedies available to the purchaser under the warranty, the manner in which Commodore intends to provide for performance of warranty obligations, any requirements which must be fulfilled by purchasers in order to obtain warranty service, a uniform procedure to be followed by purchasers in order to request warranty performance, and a uniform procedure available to purchasers to resolve warranty disputes; that Commodore enter into formal agreements with its dealers setting forth the dealers' warranty service obligations; that all mobile homes be inspected prior to delivery to purchasers for defects and reinspected 90 days after delivery; and that warranty repairs be completed within specified timeframes.

List of Subjects in 16 CFR Part 13

Mobile homes, Trade practices.

Emily H. Rock,

Secretary.

[FR Doc. 88-1562 Filed 1-26-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 389

[Docket No. RM87-6-000, Order No. 487]

Fees for Hydroelectric Project Applications To Reimburse Fish and Wildlife Agencies

Issued: January 20, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; notice of OMB control numbers.

SUMMARY: The Federal Energy Regulatory Commission, on December 16, 1987, issued a final rule (Order No. 487) in Docket No. RM87-6-000, 52 FR 48398 (December 22, 1987). The rule established fees to be paid by certain hydroelectric license or exemption applicants to reimburse fish and wildlife agencies for their costs in setting mandatory terms and conditions for those projects. This notice states that the Office of Management and Budget

has approved the information collection requirements in Order No. 487.

EFFECTIVE DATE: January 20, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra S. Vincent, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1987), require that OMB approve certain information collection requirements imposed by agency rules. On January 11, 1988, the OMB approved the information collection requirements of 18 CFR Part 2 as amended by this rule under Control Number 1902-0136. Therefore, the final rule in Docket No. RM87-6-000 is effective January 21, 1988.

Accordingly, Part 389 Chapter I, Title 18, Code of Federal Regulations is amended as set forth below.

Lois D. Cashell,
Acting Secretary.

PART 389—OMB CONTROL NUMBERS FOR COMMISSION INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

§ 389.101 [Amended]

2. The Table of OMB Control Numbers in § 389.101(b) is amended by inserting "Part 4 Subpart M" below "Part 4 Subpart L" in the Section Column and inserting "0136" in the corresponding OMB Control Number Column and by revising the OMB Control Number Column corresponding to "4.32" in the Section Column to read "0058, 0073, 0115, 0136."

[FR Doc. 88-1637 Filed 1-26-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Veterinary Medicine

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the

regulations for delegations of authority relating to approval of new animal drug applications and their supplements. This amendment authorizes specified division directors in the Center for Veterinary Medicine (CVM) to approve certain supplemental new animal drug applications.

EFFECTIVE DATE: January 27, 1988.

FOR FURTHER INFORMATION CONTACT: Melissa M. Moncavage, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is revising § 5.83 *Approval of new animal drug applications and their supplements* (21 CFR 5.83) by redesignating paragraph (c) as paragraph (d) and by adding a new paragraph (c) to authorize the Directors of the Division of Drug Manufacturing and Residue Chemistry, Office of New Animal Drug Evaluation, CVM, and the Division of Surveillance, Office of Surveillance and Compliance, CVM, to perform all the functions of the Commissioner of Food and Drugs with regard to approval of certain supplemental applications to new animal drug applications. The supplements covered by § 5.83(c) are the chemistry, manufacturing, and controls supplements described at 21 CFR 514.8(a)(4) (iii), (iv), and (v), and (d)(3). This redelegation of authority will expedite the handling and approval of such supplemental new animal drug applications.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 et seq.; 21 U.S.C. 41 et seq., 61-63, 141 et seq., 301-392, 467(f)(b), 679(b), 801 et seq., 823(f), 1031 et seq.; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a) 242a, 242l, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300u et seq., 1395y and 1395y note, 3246b(b)(3), 4831(a), 10007, and 10008; Federal Caustic

Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92-463); E.O. 11490, 11921.

2. In § 5.83, paragraph (c) is redesignated as paragraph (d) and a new paragraph (c) is added to read as follows:

§ 5.83 Approval of new animal drug applications and their supplements.

(c) The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs with regard to the approval of supplemental applications to new animal drug applications that are described by § 514.8(a)(4) (iii), (iv), and (v), and (d)(3) of this chapter.

(1) The Director, Division of Drug Manufacturing and Residue Chemistry, Office of New Animal Drug Evaluation, CVM.

(2) The Director, Division of Surveillance, Office of Surveillance and Compliance, CVM.

Dated: January 21, 1988.

Ronald G. Chesemore,
Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 88-1632 Filed 1-26-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Deletion of 3,4-Methylenedioxymethamphetamine (MDMA) From Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: By order of the the United States Court of Appeals for the First Circuit, the previous order of the Administrator of the Drug Enforcement Administration (DEA) placing 3,4-Methylenedioxymethamphetamine (MDMA) into Schedule I was vacated effective December 22, 1987. This rule will delete 3,4-Methylenedioxymethamphetamine (MDMA) from Schedule I.

EFFECTIVE DATE: The effective date of this order is January 27, 1988.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: On October 8, 1986, the Administrator of DEA signed a final order placing 3,4-Methylenedioxymethamphetamine (MDMA) into Schedule I of the Controlled Substances Act pursuant to a rulemaking proceeding. This order was published as a final rule in the *Federal Register*, on October 14, 1986. (51 FR 36552). The effective date of the order was November 13, 1986.

Dr. Lester Grinspoon, a party to the rulemaking proceedings, appealed the Administrator's order to the United States Court of Appeals for the First Circuit. On September 18, 1987, the Court issued its opinion vacating the Administrator's order and remanding the case to him for further proceedings. (828 F.2d 881). Following denial of the agency's petition for rehearing *en banc*, the Court issued its mandate on December 22, 1987.

This rule will delete MDMA from Schedule I until such time as the Administrator reconsiders the record in the scheduling proceeding and issues another final rule. While this rule removes MDMA from Schedule I, the illegal manufacture, distribution and possession of MDMA with intent for human consumption is a violation of the

Controlled Substances Act. (21 U.S.C. 813).

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the removal of MDMA from Schedule I of the Controlled Substances Act will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act. (Pub. L. 96-354). This action removes a substance from control under the Controlled Substances Act.

In accordance with the provisions of section 201(a) of the Controlled Substances Act (21 U.S.C. 811(a)), this decontrol action is part of a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to provisions of the Administrative Procedures Act, 5 U.S.C. 556 and 557, and as such have been exempted from the consultation requirements of Executive Order 12291 (49 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the Controlled Substances Act (21 U.S.C.

811(a)) and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice, 28 CFR 0.100(b); and pursuant to the order of the United States Court of Appeals for the First Circuit, the Administrator hereby orders that Part 1308, Title 21, Code of Federal Regulations, be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 871(b).

§ 1308.11 [Amended]

2. Section 1308.11 is amended by removing paragraph (d)(7), and redesignating existing paragraphs (d)(8) through (d)(25) as (d)(7) through (d)(24).

Dated: January 20, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-1592 Filed 1-26-88; 8:45 am]

BILLING CODE 4410-09-M

Proposed Rules

Federal Register

Vol. 53, No. 17

Wednesday, January 27, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 79-CE-09-AD]

Airworthiness Directives; Cessna 140A, 150, A150, 170, 172, R172, 175, P172, 177, 180, 182, 185/A185, 188/A188, 205, 206, U206/TU206, P206/TP206, 207/T207, 210/T210, 336, and 337/T337 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to revise and reissue Airworthiness Directive (AD) 79-10-14, Amendment 39-3475, applicable to certain Cessna single and twin engine airplanes to include current design fuel caps that can be installed as an alternate or equivalent means of compliance with the venting requirements of this AD. There have been several instances of fuel tank vent system obstruction by foreign material and/or sticking of the fuel vent valve in the existing fuel tank vent system. This proposed action would reduce the possibility of fuel tank vent obstruction and resulting engine power loss.

DATES: Comments must be received on or before February 28, 1988.

ADDRESSES: Cessna Service Letters No. SE77-6 dated March 4, 1977, and ME78-47 (Rev. 1) dated February 12, 1979, and Cessna Single Engine Service Kit SK182-85 dated September 21, 1984, applicable to this AD may be obtained from Cessna Aircraft Company, Customer Service, P.O. Box 1521, Wichita, Kansas 67201, or may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 79-CE-09-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments

may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT:

Mr. Paul O. Pendleton, Aerospace Engineer, ACE-140W, Federal Aviation Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone 316-946-4427.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 79-CE-09-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

AD 79-10-14, Amendment 39-3475 (44 FR 29435; May 21, 1979) as corrected (44 FR 36168; June 21, 1979), required that certain single and twin engine Cessna airplanes be provided with an alternate (redundant) fuel tank vent. The Light Single Engine (LSE) Cessna airplanes, which were all manufactured with raised fuel tank filler necks, complied with AD 79-10-14(a) by installing vented fuel caps (like those used on

later production airplanes) to replace the original non-vented caps, or (b) by incorporating the provisions of Supplemental Type Certificate (STC) approved designs to add venting in the original non-vented fuel cap.

High performance single engine Cessna airplanes were originally manufactured with recessed fuel filler openings and flush non-vented fuel caps. These airplanes initially complied with AD 79-10-14 by applying methods similar to a. or b. above. At the time of issuance of AD 79-10-14, hardware was not available to adapt the LSE style fuel caps to high performance single engine Cessna airplanes. Cessna currently provides adapters for installation of the LSE style fuel caps on most of the high performance single engine airplanes affected by AD 79-10-14. These caps were originally provided by Cessna in support of a fleet campaign to restrict the diameter of the fuel filler opening on gasoline powered airplanes to prevent misfueling. However, the ability of the LSE style fuel caps to prevent the entrance of rain water into the fuel tanks has been recognized for some time. Therefore, the FAA proposes to reduce the regulatory burden that presently prohibits the installation of the LSE fuel caps on high performance single engine Cessna airplanes by allowing the installation of these fuel caps as an equivalent means of compliance with the AD.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By revising and reissuing AD 79-10-14, Amdt. 39-3475 [44 FR 29435; May 21, 1979] as corrected [44 FR 36168; June 21, 1979], as follows:

Cessna: Applies to the following Models and serial numbered airplanes, certificated in any category:

Models	Serial Numbers
140A	15200 through 15724.
150	617; 628; 649; 17001 through 17999; 59001 through 59018; 15059019 through 15077005.
A150	15064970; A1500001 through A1500609.
170	609; 18729 through 27169.
172	610; 612; 615; 622; 625; 630; 638; 28000 through 29999; 36000 through 36999; 46001 through 47746; 17247747 through 17265684.
175	619; 28700A; 55001 through 56777; 17556778 through 17557119.
P172	P17257120 through P17257188.
R172	P17257189; R1720001 through R1720617.
177	661; 17700001 through 17701471; 17701473 through 17701597.
180	604; 624; 645; 30000 through 32999; 50001 through 50911; 18050912 through 18052202.
182	613; 631; 634; 33000 through 34999; 51001 through 53007; 18253008 through 18260638.
185/A185	632; 185-0001 through 185-1599; 18501600 through 18501896.
188/A188	With wing tanks; serials; 653; 188-0446 through 188-0572; 18800573 through 18800762.
205	641; 205-0001 through 205-0577.
206	206-0001 through 206-0275.
U206/TU206	U206-0276 through U206-1444; U20601445 through U20601666.

Models	Serial Numbers
P206/TP206	P206-0001 through P206-0603; P20600604 through P20600647.
207/T207	20700001 through 20700203.
210/T210	616; 618; 57001 through 57575; 21057576 through 21059361; T210-0001 through T210-0454.
336	336-0001 through 336-0195.
337/T337	337-0001 through 337-1193; 33701194 through 33701405.
M337B	337-0001 and up.

Compliance: Required as indicated unless already accomplished.

To provide an alternate source of fuel tank venting in case of fuel tank vent obstruction by foreign material and/or sticking of the fuel vent valve, within the next 100 hours time-in-service after the effective date of this AD, accomplish the following:

(A) Install applicable vented fuel cap(s) with related adapters and fuel servicing placards in accordance with Cessna Service Letter SE77-6 dated March 4, 1977; or as an alternative for fuel bladder equipped airplanes, Cessna Service Kit SK182-85 dated September 21, 1984, or modify existing fuel tank caps in accordance with STC SA728NW or STC SA2967SW; and for 336 and 337/T337 Series airplanes, in accordance with Cessna Service Letter ME78-47 (Rev. 1) dated February 12, 1979.

Note 1: On those airplanes having two fuel tank caps in each fuel tank, only one vented cap is required in each tank. A vented cap must be installed in the outboard filler opening of each tank.

(B) The modification required by this AD may be accomplished by those owner/operators authorized to perform preventive maintenance under FAR 43 provided only installation of a different fuel tank cap is necessary. The person accomplishing this modification must make an entry in the aircraft maintenance record indicating compliance with this AD; i.e., "AD 79-10-14 complied with by installing replacement fuel filler cap; Cessna P/N _____ this date _____ Signature."

(C) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Cessna Aircraft Company, Customer Service, P.O. Box 1521, Wichita, Kansas 67201; or may examine the document(s) referred to herein at the Federal Aviation Administration, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Note 2: Supplemental Type Certificate SA728NW is held by Mr. Dennis H. Ward, Venting Engineering, 5420 A Street, Tacoma, Washington, 98408, Phone (206) 474-6458.

Supplemental Type Certificate SA2967SW is held by Mr. Charles M. Seibel, Flight Bonus Inc., P.O. Box 665, Hurst, Texas 76053, Phone (817) 265-1650.

This amendment revises AD 79-10-14, Amdt. 39-3475, effective May 29, 1979, which superseded AD 78-28-09, Amdt. 39-3379.

Issued in Kansas City, Missouri, on January 14, 1988.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 88-1567 Filed 1-26-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-CE-02-AD]

Airworthiness Directives; de Havilland Models DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to de Havilland Models DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 airplanes which would require initial and repetitive inspections of both wing main spar lower cap angles for exfoliation corrosion and repair or replacement if necessary. The proposal is prompted by reports of such corrosion on high time airplanes. If not corrected, this condition could result in a weakened wing which, eventually, could cause catastrophic failure of the wing. The proposed actions will detect and correct any corrosion damage before it can lead to wing failure.

DATES: Comments must be received on or before March 28, 1988.

ADDRESSES: de Havilland Service Bulletin (S/B) No. 6/492 dated December 12, 1986, S/B No. 6/486 (Mod. No 6/1869) dated December 12, 1986, S/B No. 6/362 (Mod. No. 6/1630) Rev. A, dated January 18, 1985, and Technical Advisory Bulletin (TAB) No. 626/1, dated November 1970, applicable to this AD, may be obtained from the de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; telephone (416) 633-7310. This information may also be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-02-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments

may be inspected at this location between 8 a.m. and 5 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT:

Mr. Lester Lipsius, AN-172, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581; telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION:

Comments invited.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-02-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received eleven reports of high time de Havilland DHC-6 series airplanes with exfoliation corrosion on the wing main spar lower cap angles. This corrosion, if not corrected, could result in a weakened wing which, eventually could cause catastrophic failure of the wing. As a result, de Havilland Aircraft Company of Canada has issued Service Bulletin (S/B) No. 6/492 (6-57-11) dated December 12, 1986, which requires initial and repetitive inspections of the parts, internally and externally, for wings that have 10 years-in-service from the date of manufacture, or 12,000 hours time-in-service (TIS). The S/B also requires inspections of airplanes which have incorporated

Modification No. 6/1630 (S/B No. 6/362) and on wings which have incorporated Modification No. 6/1869 (S/B No. 6/486). de Havilland Technical Advisory Bulletin (TAB) No. 626/1 outlines some general procedures to prevent corrosion, rectification, and reattachment of affected areas. Replacement of the wing main spar lower cap angles will become necessary if excessive material is removed due to corrosion. Transport Canada, who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada, has classified these S/B's and the actions recommended therein by the manufacturer as mandatory by issuance of Transport Canada AD CF-87-02 to assure the continued airworthiness of the affected airplanes. On airplanes operated under Canadian registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of Transport Canada combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of S/B No. 6/492 dated December 12, 1986, including the other related de Havilland Service Bulletins, and the mandatory classification of these documents by Transport Canada. Based on the foregoing, the FAA believes that the condition addressed by S/B No. 6/492 is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States.

Consequently, the proposed AD would require initial and repetitive inspections for exfoliation corrosion, and repair or replacement, if necessary, of the wing main spar lower cap angles. It also proposes that all corrosion removed at each location be recorded and the details reported to de Havilland for evaluation before the airplane may be returned to service. Due to the complexity of the installation, the FAA has determined that it is not realistic to set allowable limits of corrosion for all areas. Therefore, it is proposed that de Havilland evaluate the extent of corrosion removed on an individual airplane basis. The FAA would then be informed of the results of de Havilland's evaluation and make official notification to the operator. Although S/B No. 6/492 specifies an initial compliance time of 6 months from the issue date of the S/B, this proposed AD has an initial

compliance time of 90 days or 400 hours time-in-service, whichever occurs first after the effective date of the AD. This approach is considered appropriate since the possibility exists that high-time aircraft are in the field that may not have had these parts inspected for corrosion.

The FAA has determined there are approximately 179 airplanes affected by the proposed AD. For airplanes that will have the wing bottom skins removed and re-attached periodically, the cost of inspecting these airplanes as presented in the proposed AD is estimated to be \$97,920 per airplane over the anticipated life span of the airplane. The total cost to the private sector is estimated to be \$20,448,960 for the fleet over the anticipated life span of the fleet, or \$2,856 per airplane per year. For airplanes incorporating Modification No. 6/1869, the cost of inspecting these airplanes as presented in the proposed AD is estimated to be \$1920 per airplane over the anticipated life span of the airplane. The total cost to the private sector, including kit costs, is estimated to be \$1,751,515 for the fleet over the anticipated life span of the fleet, or \$245 per airplane per year.

The cost of compliance with the most economical alternative of the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.39.

2. By adding the following new AD:

De Havilland: Applies to Models DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 (all serial numbers) airplanes certificated in any category which have accumulated either:

(1) Ten (10) years-in-service from the date of manufacturer or 12,000 hours time-in-service (TIS), or:

(2) Incorporated de Havilland Service Bulletin (S/B) No. 6/362, Wing Box Replacement Modification No. 6/1630, Revision A, dated January 18, 1985, and have 10 years-in-service or 12,000 hours TIS on the new wing box, or:

(3) Replaced the wings with used wings which have a total of 10 years-in-service from the date of manufacture or 12,000 cumulative hours TIS.

Compliance: Required initially within the next 90 days or 400 hours TIS, whichever occurs first after the effective date of this Airworthiness Directive (AD), unless previously accomplished within the last five years or 6,000 hours TIS, whichever occurred first.

To prevent catastrophic failure of the wing due to corrosion accumulated on the wing main spar lower cap angles, accomplish the following:

(a) Visually inspect the wing main spar and lower spar cap extrusions for corrosion using a high intensity light in accordance with the "ACCOMPLISHMENT INSTRUCTIONS", Paragraph A, of de Havilland S/B No. 6/492 (6-57-11), dated December 12, 1986.

(b) Evaluate the severity of corrosion found as outlined under "COMPLIANCE" in the above referenced S/B.

(c) Repeat the inspection in Paragraph (a) and the actions required in paragraph (b) of this AD at intervals not to exceed 6000 hours TIS or five years, whichever occurs first from the last inspection.

(d) Remove all surface corrosion and replace the cap angles, if necessary, in accordance with "ACCOMPLISHMENT INSTRUCTIONS", Paragraph B, of S/B No. 6/492.

(e) Conduct a dye penetrant inspection of parts where corrosion is removed to demonstrate freedom from corrosion, and reprotect reworked areas in accordance with instructions specified in de Havilland Technical Advisory Bulletin (TAB) No. 626/1, dated November 1970.

(f) Report details of all reworked areas to de Havilland for their evaluation. de Havilland will contact the Manager, New York Aircraft Certification Office, FAA New England Region, who will provide instructions to the owner and authorize return to service.

(g) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(h) Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Manager, New

York Aircraft Certification Office, FAA New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581; telephone (516) 791-6220 may adjust the intervals between the repetitive inspections specified in this AD.

(i) An equivalent means of compliance with the AD may be used if approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; or may examine the documents referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 12, 1988.

Donald J. Schneider,

Acting Director, Central Region.

[FR Doc. 88-1566 Filed 1-26-88; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION**16 CFR Part 13**

[File No. 832-3013]

The Silver Group, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a San Francisco-based marketer of artificial tanning devices from misrepresenting that its devices do not pose for users a risk of any harmful side effect associated with sun exposure. Respondent would be required to have reliable and competent scientific evidence for any health or safety claim it makes in any advertisement.

DATE: Comments must be received on or before March 28, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th St. and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/S-4002, C. Lee Peeler, Washington, DC 20580. (202) 326-3090.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby

given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Suntanning devices, Trade practices.

Before Federal Trade Commission

In the matter of The Silver Group, Inc., a corporation.

[File No. 882-3013]

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of The Silver Group, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between The Silver Group, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent The Silver Group Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 379 Oyster Point Boulevard, South San Francisco, California 94080.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of the complaint attached hereto.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirements that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement;

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the

proposed complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the proposed complaint attached hereto.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the proposed complaint attached hereto and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect hereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order of the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definition

For the purpose of this Order, the following definition shall apply:

"Tanning device" means any product designed to incorporate one or more ultraviolet lamps and intended for irradiation of any part of the living human body by ultraviolet radiation to induce skin tanning.

I

It is ordered that respondent The Silver Group, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting directly or by implication that:

a. Use of any such device does not pose a risk of the harmful side effects associated with exposure to the sun's radiation;

b. Use of any such device does not increase the risk of developing skin cancer;

c. Use of any such device does not contribute to skin aging.

II

It is further ordered that for one year after the date of service of this Order respondent The Silver Group, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to prominently disclose in any print advertisement, film, video tape or any other promotional material the following statement:

Notice—Read the mandatory FDA warning label found on every tanning machine for important information on potential eye injury, skin cancer, skin aging and photosensitive reactions.

The above-required language shall be included in printed material printed in a typeface and color that are clear and conspicuous, and, in multipage documents, shall appear on the cover or first page; and in any film, video tape, or slide promotional material shall be included either orally or visually in a manner designed to ensure clarity and

prominence; provided, further, that nothing contrary to, inconsistent with, or in mitigation of the above-required statement shall be used in any advertising or promotional materials.

III

It is further ordered that commencing one year after the date of service of this Order respondent The Silver Group, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making in any print advertisement, film, video tape or any other promotional material any representation, directly or by implication, that the tanning device is safe or safer than other devices or methods of tanning or that the device has health benefits unless the following statement is given:

Notice—Read the mandatory FDA warning label found on every tanning machine for important information on potential eye injury, skin cancer, skin aging and photosensitive reactions.

The above-required language shall be included in printed material printed in a typeface and color that are clear and conspicuous, and, in multipage documents, shall appear on the cover or first page; and in any film, video tape, or slide promotional material shall be included either orally or visually in a manner designed to ensure clarity and prominence; provided, further, that nothing contrary to, inconsistent with, or in mitigation of the above-required statement shall be used in any advertising or promotional materials.

IV

It is further ordered that respondent The Silver Group, Inc., its successors and assigns and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, or distribution of any product for personal or household use, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making directly or by implication, any health or safety representation, unless, at the time of such representation, respondent possesses and relies upon a reasonable basis for each such representation,

consisting of reliable and competent scientific evidence that substantiates such representation; provided however, that to the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "reliable and competent" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results.

V

It is further ordered that respondent shall distribute a copy of this Order to each current officer, employee, agent and or representative having sales or promotional responsibilities with respect to the subject matter of this Order, and to each current dealer, distributor and purchaser or lessee for commercial use, of its tanning devices, such as health clubs, tanning salons, beauty salons, catalogue houses, and tanning device retailers. A dealer, distributor, purchaser, or lessee is "current" for purposes of this paragraph if it holds a device on consignment for sale; purchased a device for resale or other commercial purpose within the two-year period preceding service of this Order; received from respondent, within that two-year period, either directly or indirectly, any promotional or advertising material for the sale or other commercial use of the devices or to whom respondent directly or indirectly provided financial advertising support; or leases a device for commercial purposes from respondent.

VI

It is further ordered that for three (3) years from the date that the representations to which they pertain are last disseminated, respondent, its successors and assigns shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any claim or representation covered by this Order; and

B. All test reports, studies, surveys, or other materials in its possession or control or of which it has knowledge that contradict, qualify, or call into question such representation or the basis upon which respondent relied for such representation, including complaints from consumers.

VII

It is further ordered that for ten (10) years after the date of service of this Order respondent, its successors and assigns shall maintain for three (3) years from the last date of dissemination of the material a copy of each nonidentical form of promotional and training material disseminated by respondent and upon request make such material available to the Federal Trade Commission or its staff for inspection and copying.

VIII

It is further ordered that for ten (10) years after the date of service of this Order respondent, its successors and assigns shall maintain for three (3) years and upon request make available to the Federal Trade Commission for inspection and copying records of the name and last known address of each dealer, distributor and purchaser or lessee for commercial use of respondent's tanning devices to whom respondent provided, directly or indirectly through a distributor or other representative, any promotional or advertising material for the sale or other commercial use of the devices or to whom respondent directly or indirectly provided financial advertising support.

IX

It is further ordered that respondent, its successors and assigns shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation of dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

X

It is further ordered that respondent shall, within sixty (60) days after service of this Order upon it and at such other times as the Commission may require, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied or intends to comply with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted subject to final approval an agreement to a proposed consent order from The Silver Group, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by

interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns advertisements for The Silver Group's tanning devices which use lamps emitting ultraviolet (UV) radiation to cause tanning of the user's skin.

The Commission's complaint in this matter charges The Silver Group with disseminating advertisements containing false and unsubstantiated representations regarding the safety of its tanning devices. According to the complaint, advertisements for The Silver Group's tanning devices falsely claimed that the devices cannot contribute to skin aging, can be sued without the risk of any harmful side effect associated with the sun, and cannot increase the risk of skin cancer. The complaint alleges that these claims are, in fact, false and The Silver Group's tanning devices can contribute to skin aging, cannot be used without the risk of any harmful side effect, and can increase the risk of developing skin cancer.

The complaint also alleges that the advertisements contained false representations that The Silver Group had a reasonable basis for the claims that its devices cannot contribute to skin aging, can be used without the risk of any harmful side effect associated with the sun, and that its devices cannot increase the risk of skin cancer when, in fact, The Silver Group did not have a reasonable basis for these representations.

The consent order contains provisions designed to remedy the advertising violations charged as well as to prevent The Silver Group from engaging in similar acts and practices in the future. Part I of the consent order prohibits The Silver Group from misrepresenting, directly or by implication, that its devices do not pose a risk of the harmful side effects associated with sun exposure, do not increase the risk of developing skin cancer, and do not contribute to skin aging.

Part II of the consent order requires that for one year The Silver Group include in all advertisements and promotional materials a notice statement alerting users to read the mandatory FDA warning label found on all tanning devices for important information on potential eye injury, skin

cancer, skin aging and photosensitive reactions.

Part III of the consent order requires that commencing one year after the date of service of this order The Silver Group include a notice statement in any advertisement making a claim that its tanning devices are safe or safer than other devices or methods of tanning or that the device has health benefits. The statement alerts users to read the mandatory FDA warning label for important information on potential eye injury, skin cancer, skin aging and photosensitive reactions.

Part IV of the consent order requires that The Silver Group to have reliable and competent scientific evidence to support any health or safety representation contained in an advertisement.

Part V of the consent order requires the The Silver Group to send a copy of the consent order to each of its current dealers, distributors and purchasers or lessees for commercial use, such as health clubs, tanning salons, beauty salons, catalogue houses, and tanning device retailers.

Parts VI through X of the consent order are standard order provisions requiring The Silver Group to retain certain business records, report to the Commission certain corporate changes and provide a report to the Commission on its compliance with the provisions of the consent order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-1563 Filed 1-26-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 87-21]

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); request for comments.

SUMMARY: The FHWA is inviting comments on proposed amendments to

the MUTCD. The MUTCD is incorporated by reference in 23 CFR Part 655, Subpart F and recognized as the national standard for traffic control devices on all public roads. The amendments affect various parts of the MUTCD and are intended to expedite traffic, improve safety, and provide a more uniform application of highway signs, signals, and markings.

DATE: Comments must be received on or before July 22, 1988.

ADDRESS: Submit signed, written comments, preferably in triplicate, to FHWA Docket No. 87-21, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Philip O. Russell, Office of Traffic Operations, (202) 366-2184, or Mr. Michael J. Laska, Office of Chief Counsel, (202) 366-1383, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for \$44.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 950-036-00000-1. The purchase of a MUTCD includes a subscription service for adopted revisions.

The FHWA both receives and initiates requests for amendments to the MUTCD. Each request is assigned an identification number which indicates, by Roman numeral, the organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received.

This notice is being issued to provide an opportunity to comment on the desirability of proposed amendments to the MUTCD. Based upon comments received in response to this notice and upon its own experience, the FHWA will issue a final rule concerning these requests.

Index of Requests

General Provisions (Part I)

(1) Request I-8(C)—Responsibility for Maintaining Traffic Control Devices.

Signs (Part II)

(2) Request II-119(C)—Standard Sign to Implement Mandatory Seat Belt Laws.

(3) Request II-161(C)—LOGO Signing—Number of LOGO's on Sign Panels.

Markings (Part III)

(4) Request III-35(C)—Warrants for Centerline Pavement Markings.

(5) Request III-48(C)—Lane Lines in Cloverleaf Interchanges.

Signals (Part IV)

(6) Request IV-85(C)—Revision of Warrant 7, System Warrant.

Traffic Control Systems for Street and Highway Construction and Maintenance Operations (Part VI)

(7) Request VI-56(C)—Work Zone Lane Shift Tapers.

(8) Request VI-57(C)—Temporary Pavement Markings in Construction and Maintenance Areas.

(9) Request VI-59(C)—Section 6G-6, Control of Traffic.

(10) Request VI-60(C)—Color and Design of Work Zone Vests.

Copies of the proposed text changes to the MUTCD will be distributed to everyone currently appearing on the FHWA mailing list for MUTCD matters. Those wishing to be added to the mailing list or receive copies of the proposed text should write to the Federal Highway Administration, Office of Traffic Operations (HTO-21), 400 Seventh Street SW., Washington, DC 20590 or contact Mr. Philip O. Russell (202) 366-2184.

Discussion of Requests

The FHWA proposes to act on the requests for change to the MUTCD as noted below:

General Provisions (Part I)

(1) Request I-8(C)—Responsibility for Maintaining Traffic Control Devices. The National Transportation Safety Board (NTSB) investigated an accident where traffic control devices had been removed by an agent of a highway agency. The missing traffic control devices may have had a direct bearing on the cause of the accident and on the severity of the accident. The NTSB has requested that responsibility for maintaining traffic control devices be clarified in the MUTCD.

The FHWA proposed to amend the first sentence of Section 1A-3 to read: "The responsibility for the installation, operation and effective maintenance of traffic control devices rests with the

governmental body or official having jurisdiction."

The amendment imposes no additional costs on highway agencies, therefore, no implementation period is proposed.

Signs (Part II)

(2) *Request II-119(C)—Standard Sign to Implement Mandatory Seat Belt Laws.* The National Association of Governor's Highway Safety Representatives has requested that a standard sign be developed and adopted for use by States having mandatory safety seat belt laws. Because of the variations that exist among the seat belt laws of the several States, it is not possible to adopt a standard sign. However, it does appear to be practical to develop and adopt a standard symbol that can be used on regulatory signs that notify vehicle occupants of mandatory seat belt laws.

The FHWA and the Symbols Task Force of the National Committee on Uniform Traffic Control Devices (NCUTCD) have reviewed and evaluated many existing and proposed symbol designs. The symbol shown below has emerged as the most favored at this time. Therefore, the FHWA is proposing to amend the MUTCD to require that the standard symbol be used, if a State determines that a seat belt symbol is to be shown on the regulatory signs that implement its mandatory safety seat belt laws. The FHWA is also soliciting comments on both the concept of using a standard symbol for this purpose and on the details of the proposed symbol. The FHWA plans to use the comments received regarding the details of the proposed symbol to guide its final design.



This amendment may have some financial impact in those States that have already installed signs for mandatory safety seat belt laws. To offset these costs, an implementation period of 7 years (the average life of a sign) is proposed.

(3) *Request II-161(C)—LOGO Signing—Number of LOGO's on Sign Panels.* The rules and regulations for Specific Service (LOGO) Signing were transferred from 23 CFR Part 655, Subpart C and incorporated into the MUTCD by Final Rule, FHWA Docket No. 83-26 (50 FR 10001, March 13, 1985).

There are now over 30 States using LOGO signs on some or all of their rural freeway systems. Since the initial installations of LOGO signs in 1968, the number of LOGOs on a sign panel has been limited to six for GAS and four each for FOOD, LODGING, and CAMPING. More than 30 States now have experience with LOGOs and LOGO programs. The FHWA proposes to allow each State to determine the maximum number of logos that it will permit for each of the LOGO panel categories. In addition, this amendment will allow the background of the LOGO to be other than blue, at each State's discretion; the paragraph discussing LOGO signing on ramps will be clarified; and several minor editorial changes will be made.

Because changes to existing or future LOGO signing with regard to the number of LOGOs that will be used on each panel will be at the State's discretion, no implementation period is necessary.

Markings (Part III)

(4) *Request III-35(C)—Warrants for Centerline Pavement Markings.* The Center for Auto Safety (CAS) has petitioned the FHWA to initiate rulemaking to establish warrants for centerline pavement markings. A review and evaluation of the FHWA research and development program to improve the effectiveness of highway delineation techniques was conducted by Messrs. Richard N. Schwab and Donald G. Capelle. Their conclusions were reported in the June 1980 issue of the Institute of Transportation Engineers Journal.

Their conclusions are: (1) Centerline markings can be cost beneficial at average daily traffic volumes (ADT) as low as 50 vehicles and (2) centerlines should be used on any paved roadway surface that will retain pavement markings and that carries two-way traffic.

The FHWA proposes to amend the fifth paragraph of Section 3B-1 to read as follows:

Center lines shall be placed on all paved roadway surfaces that will retain pavement markings under the following conditions:

1. In rural districts on all two-way roadways 18 feet or more in width when the prevailing off-peak 85 percentile speed or posted speed limit, whichever is higher, is 35 MPH or greater.
2. In residence or business districts on all through highways with an ADT of 50 or greater, and on other streets where the ADT is 500 or greater.

This amendment will impose some costs on State and local highway agencies. To offset these costs, an

implementation period of 5 years is proposed.

(5) *Request III-48(C)—Lane Lines in Cloverleaf Interchanges.* Mr. Richard I. Kahl has pointed out a need to illustrate the desirable pavement marking pattern to be used to separate the mainline from a cloverleaf's combined acceleration/deceleration lane. The FHWA proposes to add a figure to section 3B-11 that will show the typical installation of these pavement markings.

There are many tasks to be accomplished by the drivers in the weaving section between cloverleaf ramps. Defining the lane line throughout the entire length of the combined acceleration/deceleration lane, with standard skip stripe markings, is desirable so that drivers can better determine their lateral position.

It is possible to design a more complex set of coded pavement markings to inform the drivers of their longitudinal position within the weaving area. Because of the high degree of pavement marking wear that occurs in weaving areas, the FHWA finds that it is not practical to attempt to maintain such a system in the field.

This amendment adds a figure that clarifies a provision of the MUTCD. No implementation period is needed.

Signals (Part IV)

(6) *Request IV-85(C)—Revision to Warrant 7, Systems Warrant.* The Systems Warrant (existing Warrant 7) is intended to provide for signalization of planned major routes in order to encourage concentration and organization of traffic flow networks. Typically, it is used in intermediate or outlying areas of developing density but may also have application elsewhere in an urban area. Selected traffic signal installations can permit desirable location of traffic signals, reduce the total number of signals and improve progression within the highway (street) system.

The NCUTCD reviewed the warrant and recommended several revisions to remedy minor deficiencies and to make the warrant more realistic for today's traffic characteristics while still meeting the original intent:

1. Increase the required volume of existing or immediately projected traffic entering the intersection to be 1,000 vehicles (now 800) during the peak hour of a typical weekday or for each of any 5 hours of a Saturday and/or Sunday.
2. Relative to application of the peak hour criteria, that for 5 year projected traffic volumes based on an engineering study, one or more of the volume based warrants would be met.

3. The existing version of the warrant lists five characteristics of a major route and stipulates that a route, to be considered major in applying the warrant, must have one or more of these characteristics. It is recommended that characteristic (2) (It connects areas of principal traffic generation.) be deleted as it is subject to varying definitions and it is already covered in the other characteristics. It is also recommended that characteristic (4) (It has surface street freeway or expressway ramp terminals.) be deleted as it is covered in the other characteristics. The FHWA proposes to amend Section 4C-9 (Warrant 7, Systems Warrant) to provide for these changes.

The proposed amendment will provide a more realistic warrant and does not impose additional costs on State and local highway agencies. No compliance date is needed to implement this change.

Traffic Control Systems for Street and Highway Construction and Maintenance Operations (Part VI)

(7) *Request VI-56(C)—Work Zone Lane Shift Tapers.* The NCUTCD has requested that Part VI of the MUTCD be amended by adding length standards for work zone lane shift tapers. Most manuals and other publications do not differentiate between the length of taper required for different taper applications. Often the same taper length is recommended for a merge application and for a lane shift application. The NCUTCD also found that there is no standard use of terms for describing the various taper applications.

The FHWA proposes to adopt the recommendations of the NCUTCD. Section 6C-2 will be separated into two separate sections. The first will address the length of tapers and will include the following table. The second section will include the channelization issues that are currently presented in section 6C-2.

TABLE VI-2—TAPER LENGTH CRITERIA FOR WORK ZONES

Type of taper	Taper length
Upstream tapers:	
Merging taper.....	L minimum.
Shifting taper.....	½ L minimum.
Shoulder taper.....	½ L minimum.
Two-way traffic taper.	100 feet maximum.
Downstream tapers (Use is optional).	100 feet minimum.

Formulas for L

Speed limit	Formula
40 MPH or less.....	$L = (W \times S \times S) \div 60$.
45 MPH or greater.....	$L = W \times S$.

L = Taper length in feet.
W = Width of offset in feet.
S = Posted speed or off-peak 85 percentile speed in MPH.

In addition, Figures 6-5, 6-6, and 6-7 will be revised to reflect the above changes.

The amendment will impose some additional costs on State and local highway agencies, therefore, an implementation period of 1 year is proposed.

(8) *Request VI-57(C)—Temporary Pavement Markings in Construction and Maintenance Areas.* Request VI-3 as published in the MUTCD implemented requirements for minimum pavement marking treatments for traffic control in work zones. That revisions provided for minimum stripe to gap ratios, allowed raised pavement markers, and other changes.

It is proposed to further amend section 6D to clarify and provide further guidance. Section 6D-1 is being revised to provide further guidance for the use of permanent pavement markings in accordance with sections 3B, 7C, 8B-4, and 9C on any permanent pavement surfaces and final lifts as well as on temporary pavements, detours, runarounds, or interim lifts open to traffic and when the project work is suspended for the winter or other extended periods of time.

Section 6D-3 Exception Number 1 is being revised to further describe temporary lanes and center lines. Also, the provisions for the use of signs rather than pavement markings in short-term operations is being expanded to apply to low-volume roadways.

Section 6D-3 is being further revised to include a recommendation that each highway agency should have a policy that will, within the scope of this section, provide more detailed criteria and describe the conditions where temporary pavement markings will be used. This policy should include, but not be limited to, criteria, definitions of extended periods of time and a traffic volume threshold for low-volume roads.

The changes are being made to clarify the amendments made by the Final Rule on March 9, 1987, at 52 FR 7126, provide more guidance for pavement markings on permanent pavement surfaces and interim or temporary pavements open to traffic for extended periods of time, and

allow flexibility for the use of signs rather than pavement marking for low volume roads.

It is the policy of the FHWA that full standards for pavement markings are desirable for all pavements and the minimums should be used when full standards are not practical or possible.

The Final Rule on March 9, 1987, at 52 FR 7126, has a compliance date of December 31, 1988. This amendment adds some flexibility to the provisions adopted in the March 9, 1987, Final Rule. Therefore, the same compliance date of December 31, 1988 is proposed for this amendment.

(9) *Request VI-59(C)—Section 6C-6, Control of Traffic.* The NCUTCD has requested that the sentence, "The use of traffic control signs should be discouraged," be deleted from the first paragraph of MUTCD section 6C-6. The NCUTCD requests this change because the sentence is potentially misleading. While the objective on freeways is to keep traffic in a free-flowing condition as much as possible, this sentence, taken out of context, can be easily misinterpreted and is misleading to those responsible for traffic control on freeways. The statement has little value in this section.

The FHWA supports this amendment. This amendment will impose no additional costs on highway agencies, therefore, it is proposed that the change would become effective upon the issuance of a final rule. No implementation period is required.

(10) *Request VI-60(C)—Color and Design of Work Zone Vests.* Section 6F-3 of the MUTCD includes the following provision: "The use of orange clothing such as a vest, shirt, or jacket shall be required for flaggers. For nighttime conditions, similar outside garments shall be reflectorized." The MUTCD does not include provisions that would describe or provide details on the color, design, or extent of the retroreflection. The FHWA has interpreted section 6F-3 to mean that only orange colored retroreflective material will satisfy the standard. In practice, vests have had a variety of designs, patterns, and colors for the retroreflective portion of the vests. Accordingly, it is proposed to amend section 6F-3 by adding two sentences to the end of the second paragraph to read as follows: "The retroreflective material shall be either orange, white, or yellow. The design of the retroreflective portions including stripe width, extent, design and type of material shall be determined by the

contracting agency, or purchaser of the vest."

The term "reflection" as used throughout Section 6F-3 will be changed to "retroreflection."

This amendment will have no financial impact on State and local agencies. No implementation period is needed.

This notice of proposed amendments to the MUTCD is issued under the authority of 23 U.S.C. 109(d), 315, and 402(a), and the delegation of authority in 49 CFR 1.48(b).

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant proposal under the regulatory policies and procedures of the Department of Transportation. For the reasons stated herein and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities. Due to the preliminary nature of the inquiry, a regulatory evaluation has not been prepared at this time. The expected impact of the changes requested is so minimal that a full regulatory evaluation does not appear to be warranted. The need to further evaluate economic consequences will be reviewed on the basis of the comments submitted in response to this notice.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Signs, Traffic regulations, Incorporation by reference.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on January 20, 1988.

Robert E. Farris,
Deputy Administrator, Federal Highway Administration.

[FR Doc. 88-1568 Filed 1-26-88; 8:45 am]

BILLING CODE 4910-22-M

Coast Guard

33 CFR Parts 140, 143, and 146

[CGD 84-098b]

Emergency Evacuation Plan for Manned OCS Facilities

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking, extension of comment period.

SUMMARY: This notice extends the

comment period for the notice of proposed rulemaking that would require a comprehensive, site specific contingency plan for the emergency evacuation of all personnel from manned fixed facilities and Mobile Offshore Drilling Units on the Outer Continental Shelf (OCS facilities). The extension was requested by seven commentors, three of whom are industry associations. All seven commentors cited the importance of this regulatory initiative, the delays created by the Christmas 1987 holidays, and their difficulty in providing meaningful responses within the original 30 day comment period. Two commentors requested a 30 day extension, one commentor a 45 day extension, three commentors a 60 day extension, and one commentor requested an extension of an unspecified length. Because of these requests for additional time to comment on the notice of proposed rulemaking, the deadline for receipt of comments is extended to February 25, 1988.

DATE: The comment period on the notice of proposed rulemaking is extended to February 25, 1988.

ADDRESSES: Comments may be mailed to Commandant (G-CMC/21) (CGD 84-098b), U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593-0001. Comments will be available for inspection or copying at the Office of the Marine Safety Council (G-CMC), Room 2110, at the above address, between the hours of 8 a.m. and 3 p.m., Monday through Friday, except holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: LCDR Anthony Dupree, Offshore Activities Branch, (202) 267-2307.

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking was published on December 24, 1987 in the Federal Register (52 FR 48717).

Dated: January 22, 1988.

J.W. Kline,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-1622 Filed 1-26-88; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 946

Disposition of Property Acquired by the Postal Inspection Service

AGENCY: Postal Service.

ACTION: Proposed Rule.

SUMMARY: This proposal would revise existing procedures for the disposition

of: (a) Property stolen from the mails and recovered by Postal Inspectors and (b) property obtained by the Postal Inspection Service for use as evidence, after the need to retain such property no longer exists. A claims procedure would be established whereby such property, except contraband, would be returned to its owner. Apparent owners would be notified of their right to claim such property and, where no apparent owner is known and the value of the property in question exceeds \$200, notice would be published inviting the owner to submit a claim for its return.

DATE: Comments must be received on or before February 26, 1988.

ADDRESS: Written comments should be directed to the Program Manager, Forfeiture and Property Management Unit, Postal Inspection Service, Room 3526, 475 L'Enfant Plaza, SW., Washington, DC 20260-2160. Copies of all written comments will be available at that address for inspection and copying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Postal Inspector P.M. Renzulli, (202) 268-5476.

SUPPLEMENTARY INFORMATION: In the course of conducting official investigations, Postal Inspectors frequently recover property lost or stolen from the mails and obtain custody of property needed for use as evidence in proceedings to enforce various provisions of the United States Code. In most cases, such property is returned to the owner at the conclusion of the investigation or any resulting administrative or judicial proceedings. However, in some cases the owners fail to claim such property and it therefore remains in the custody of the Postal Inspection Service after it is no longer needed. The proposed rule would establish a fair and uniform procedure for identifying the owners of such property, affording them an opportunity to claim its return and, in the event a valid claim is not received, treating such property as abandoned and directing that it be sold or put to official use.

List of Subjects in 39 CFR Part 946

Administrative practice and procedure, Claims, Currency, Law enforcement, Postal Service.

In view of the considerations discussed above, the Postal Service invites comments on 39 CFR Part 946 which the Postal Service proposes to revise to read as follows:

**PART 946—RULES OF PROCEDURE
RELATING TO THE DISPOSITION OF
STOLEN MAIL MATTER AND
PROPERTY ACQUIRED BY THE
POSTAL INSPECTION SERVICE FOR
USE AS EVIDENCE**

Sec.

- 946.1 Scope of part.
- 946.2 Disposition of property of apparent owners.
- 946.3 Contraband and property subject to court order.
- 946.4 Disposition of property of unknown owners.
- 946.5 Disposition of property having a value of less than \$200.
- 946.6 Disposition of abandoned property; additional period for filing claims.
- 946.7 Submission of claims.
- 946.8 Determination of claims.
- 946.9 Reconsideration of claims.
- 946.10 Record retention.
- 946.11 Proceeds of sale.

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401(2), (5), (8), 404(a)(7), 3001.

§ 946.1 Scope of part.

This part prescribes procedures governing the disposition of recovered stolen mail matter and any other property (real, personal, tangible or intangible) obtained by the Postal Inspection Service for possible use as evidence after the need to retain such property no longer exists. Property obtained by Postal Inspectors which appears to have been loose in the mails but is not retained for use as evidence, except unlawful matter, must be treated in accordance with postal regulations concerning disposition of dead mail (see Domestic Mail Manual (DMM) 159.4). Unlawful matter must be disposed of in accordance with § 946.3.

§ 946.2 Disposition of property of apparent owners.

Where an apparent owner of property subject to this part is known, the Chief Postal Inspector or delegate will mail, by certified mail to the apparent owner's last known address, written notice describing the property and the procedure for filing a claim for its return (see §§ 946.3 and 946.7). Such claims must be filed within 30 days from the date the notice is postmarked. If the apparent owner of the property fails to file a timely claim, the property is considered abandoned and must be disposed of as provided in § 946.6.

§ 946.3 Contraband and property subject to court order.

Claims submitted with respect to property subject to this part, possession of which is unlawful, must be denied, in writing, by certified mail and the person submitting the claim must be accorded 45 days from the postmarked date to

institute judicial proceedings to challenge the denial. If judicial proceedings are not instituted within 45 days, or any extension of time for good cause shown, the contraband property must be destroyed unless the Chief Postal Inspector or delegate determines that it should be placed in official use by the Postal Inspection Service. Property subject to this part, the disposition of which is involved in litigation or is subject to an order of court, must be disposed of as determined by the court.

§ 946.4 Disposition of property of unknown owners.

(a) Where no apparent owner of property subject to this part is known, except property described in § 946.3, and the Chief Postal Inspector or delegate estimates that the fair market value of the property exceeds \$200, and the property is not needed as evidence, the Chief Postal Inspector or delegate must publish notice providing the following information:

- (1) A description of the property including model or serial numbers, if known;
- (2) The name, address, and telephone number of the Postal Inspector in Charge who has custody of the property; and
- (3) A statement inviting any person who believes that he or she is fully entitled to the property to submit a claim for its return with the Postal Inspector in Charge who is identified in the notice. Such claim must be submitted within 30 days from the date of first publication of the notice. (See § 946.7)

(b) The notice under § 946.4(a) must be published once a week for three consecutive weeks in a publication of general circulation within the judicial district where the Postal Inspection Service took possession of the property.

§ 946.5 Disposition of property having a value of less than \$200.

Where the owner of property subject to this part is unknown and the Chief Postal Inspector or delegate estimates that fair market value of such property is \$200 or less, title to the property vests in the United States Postal Service, subject to the right of the owner to submit a valid claim as provided in § 946.6.

§ 946.6 Disposition of abandoned property; additional period for filing claims.

(a) Upon expiration of the time provided in §§ 946.2 and 946.4(a)(3) for the filing of claims or any extension thereof, and without the receipt of a timely claim, the property described in the notice is considered abandoned and becomes the property of the United

States Postal Service. However, if the owner satisfies the requirements of § 946.5(b), except for property described in § 946.3, such abandoned property must be returned to the owner if a valid claim is filed within 3 years from the date the property became abandoned, with the following qualifications:

(1) Where property has been placed in official use by the Postal Inspection Service, a person submitting a valid claim under this section must be reimbursed the fair market value of the property at the time title vested in the United States Postal Service, less costs incurred by the Postal Service in returning or attempting to return such property to the owner and;

(2) Where property has been sold, a person submitting a valid claim under this section must be reimbursed the amount of proceeds realized from the sale of such property less costs incurred by the Postal Service in selling the property and in returning or attempting to return such property to the owner.

(b) In order to present a valid claim under § 946.6(a), the claimant must establish that he or she had no actual or constructive notice prior to the date the property became abandoned that he or she was entitled to file a claim pursuant to § 946.2 or § 946.4. Publication of notice pursuant to § 946.4 provides constructive notice unless a claimant can demonstrate circumstances which reasonably precluded his access to the published notice.

§ 946.7 Submission of claims.

Claims submitted pursuant to this part must be submitted on Postal Service Form 1503 which may be obtained from the Inspector in Charge who has custody of the property.

§ 946.8 Determination of claims.

Upon receipt of a claim under this part, the Postal Inspection Service must conduct an investigation to determine the merits of the claim. The results of the investigation must be submitted to the Chief Postal Inspector or delegate who must approve or deny the claim by written decision, a copy of which must be forwarded to the claimant by certified mail. If the claim is approved, the procedures to be followed by the claimant to obtain return of the property, or its determined value, must be stated. If the claim is denied, the decision must state the reasons therefor.

§ 946.9 Reconsideration of claims.

A written request for reconsideration of denied claims may be submitted within 10 days of the postmarked date of the mailing denying the claim. Such

requests must be addressed to the Chief Postal Inspector or delegate and must be based on evidence recently developed or not previously presented.

§ 946.10 Record retention.

Records regarding property subject to this part will be retained for a period of 3 years following return of the property to its owner or a determination that the property is abandoned.

§ 946.11 Proceeds of sale.

Proceeds from the sale of property subject to this part must be deposited in the fund established by 39 U.S.C. 2003 as miscellaneous receipts.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-1571 Filed 1-26-88; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 145

[FRL-3320-5]

State Oil and Gas Board of Mississippi; Underground Injection Control Primacy Application

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period and of public hearing.

SUMMARY: The purpose of this notice is to announce that (1) the Environmental Protection Agency [EPA] has received a complete application from the State Oil and Gas Board of Mississippi requesting approval of its Underground Injection Control program; (2) the application is available for inspection and copying and public comments are requested; and a public hearing will be held.

This notice is required by the Safe Drinking Water Act as a part of the response to the State's complying with the statutory requirement that there be an Underground Injection Control program in designated States.

The proposed comment period and public hearing will provide EPA the breadth of information and public opinion necessary to approve, disapprove, or approve in part and disapprove in part the application from the State Oil and Gas Board to regulate oil and natural gas related injection wells (Class II) in Mississippi.

DATES: Requests to present oral testimony should be filed by February 22, 1988; the Public Hearing will be held on March 8, 1988 at 10:30 a.m. and 7:00 p.m. The Hearing will be held in the 1400

Walter Sillers Building, State Oil and Gas Board, Jackson, Mississippi 39201. The morning session will be held in the 14th Floor Hearing Room. The evening session will be held in the 2nd Floor Conference Room. Comments will be accepted until March 18, 1988.

ADDRESSES: Comments and requests to testify may be mailed to James S. Kutzman, Chief, Ground-Water Protection Branch, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365. Copies of the application and pertinent material are available for public inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday at the following locations:

Environmental Protection Agency, Region IV, Library, Ground Floor, 345 Courtland Street, NE., Atlanta, Georgia 30365, [404] 347-4216; State Oil and Gas Board of Mississippi, 1400 Walter Sillers Building, Jackson, Mississippi 39201, [601] 359-3725.

The cost to purchase a copy of the application is thirty-five dollars (\$35.00).

FOR FURTHER INFORMATION CONTACT: James S. Kutzman, Chief, Ground-Water Protection Branch, Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30265 (404) 347-3866. Comments should also be sent to this address.

SUPPLEMENTARY INFORMATION: The application from the State Oil and Gas Board of Mississippi is for the regulation of all class II oil and natural gas related injection wells in the State. The application includes a description of the State Underground Injection Control program, copies of all applicable rules and forms, a statement of legal authority and a memorandum of agreement between the State Oil and Gas Board of Mississippi and the Region IV Office of the Environmental Protection Agency.

Date: January 20, 1988.

Joe R. Franzmathes,
Acting Regional Administrator.

[FR Doc. 88-1626 Filed 1-26-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300175; FRL-3319-9]

Paper Fiber; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that paper fiber be exempted from the

requirement of a tolerance when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops only. This proposed regulation was requested by Jellinek, Schwartz, Connolly, and Freshman, Inc.

DATE: Written comments, identified by the document control number [OPP-300175], must be received on or before February 26, 1988.

ADDRESS: By mail, submit comments to: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to:

Registration Support and Emergency Response Branch, Registration Division (TS-767C), Environmental Protection Agency, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Lynn M. Bradley, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number:

Registration Support and Emergency Response Branch, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-7700.

SUPPLEMENTARY INFORMATION: At the request of Jellinek, Schwartz, Connolly, and Freshman, Inc., the Administrator proposes to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for paper fiber when used as a carrier in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as

defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; and propellants in aerosol dispensers and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Paper fiber. *Name and address of requestor.* Jellinek, Schwartz, Connolly, and Freshman, Inc., 1350 New York Ave., NW., Suite 400, Washington, DC 20005.

Bases for approval of paper fiber. 1. Several similar cellulosic materials are cleared under 40 CFR 180.1001(c) for use as carriers in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. These include alpha-cellulose, oat hulls, shells (almond, cocoa, coconut, and walnut), wood flour, etc.

2. Pulp is cleared under 21 CFR 186.1673 as an indirect food substance affirmed as generally recognized as safe (GRAS).

EPA has initiated new review procedures for tolerance exemptions for inert ingredients. Under these procedures the Agency conducts a review of the data base supporting any prior clearances, the data available in the scientific literature, and any other relevant data. Based on a review of such data, the Agency has determined that no additional test data will be required to support these regulations.

Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices this ingredient is useful and does not pose a hazard to humans or the environment. In conclusion, the Agency has determined that the proposed amendment to 40 CFR Part 180 will protect the public health. It is therefore proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide

Act (FIFRA), as amended, that contains this inert ingredient may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number [OPP-300175]. All written comments filed in response to this proposal will be available for inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: January 14, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
Paper fiber, produced by the kraft (sulfate) or sulfite pulping processes.		Carrier.

[FR Doc. 88-1383 Filed 1-26-88; 8:45 am]

BILLING CODE 6550-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88-06; Notice 1]

Federal Motor Vehicle Safety Standards; Side Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Standard No. 214, *Side Door Strength*, to upgrade its test procedures and performance requirements for passenger cars. The standard currently measures performance in terms of the ability of each door to resist a piston pressing a rigid steel cylinder inward against the door. Today's proposed amendments would require an additional test in which a passenger car must protect its occupants in a full-scale crash test in which the car is struck in either side by a moving barrier simulating another vehicle. Newly-developed instrumented test dummies would be positioned in the target car to measure the potential for injuries to an occupant's thorax and pelvis. (In another notice in today's Federal Register, the agency is proposing the specifications and performance requirements for the new side impact test dummy.)

DATES: Comments must be received by October 24, 1988. If adopted, the proposed amendments would be phased-in to provide manufacturers sufficient time to achieve compliance. This notice proposes to phase-in compliance with the new requirements by progressively higher percentages of annual production, beginning with the first full production year (September 1 to August 31) beginning more than 24 months after the issuance of the final rule. Compliance by 100 percent of new cars would be required for cars manufactured on or after the beginning of the fourth full year after that 24-month period.

ADDRESS: Comments should refer to the docket and notice numbers of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic

Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours 8 a.m.-4 p.m.)

FOR FURTHER INFORMATION CONTACT:

Dr. Richard Strombotne, Office of Vehicle Safety Standards, NRM-12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202 366-4916).

SUPPLEMENTARY INFORMATION:

I. The Existing Standard

The National Highway Traffic Safety Administration's current standard for side impact protection is Federal Motor Vehicle Safety Standard No. 214, *Side Door Strength*. The standard specifies performance requirements for each side door in a passenger car to mitigate occupant injuries in side impacts. The standard seeks to do this by reducing the extent to which the side structure of a car is pushed into the passenger compartment during a side impact. The standard requires each door to resist crush forces that are applied by a piston pressing a steel cylinder against the door's outside surface in a laboratory test. The standard does not attempt to regulate directly the level of crash forces experienced by an occupant when striking the car interior in such an impact. Since the standard became effective on January 1, 1973, vehicle manufacturers have generally chosen to meet the performance requirements of the standard by reinforcing the side doors with metal beams.

NHTSA's analysis of real-world crash data has shown that the strengthening of the side doors with the beams is indeed effective, but primarily in single car side impacts. The agency's November 1982 study, "An Evaluation of Side Structure Improvements in Response to Federal Motor Vehicle Safety Standard 214," (DOT HS 806-314) estimated that 480 lives have been saved and 9,500 fewer hospitalizations have occurred per year as a result of the standard. The study also found that while single vehicle occupant fatalities were reduced by 14 percent, the standard had little effect on reducing fatalities in multi-car collisions. (The agency evaluation report (DOT HS 806-314) analyzing the effectiveness of the current standard and other relevant information have been filed in the agency's Docket 82-19, Notice 1. Other information on the agency's side impact protection program is also available in Docket 79-04, General Reference and Notices 1 and 2, Docket 82-11, General Reference, and Docket 82-19, Notice 1.)

II. Summary of the Proposed Amendments

Because of the large number of fatalities and injuries which continue to result from side impact crashes, the agency initiated a research program to upgrade the current standard. This effort focused primarily on thoracic protection since data indicate that contact between the thorax and the side interior is a major source of serious injuries and fatalities.

The agency has conducted research on improved side impact protection since the late 1970's. Much information has been acquired not only from agency research but also from industry and research groups throughout the world. The agency has presented its findings and has communicated with groups in numerous meetings and conferences such as Society for Automotive Engineers (SAE), Stapp Car Crash Conferences, Experimental Safety Vehicle Conferences (ESV), International Research Council on Biokinetics of Impacts (IRCOBI), and NHTSA sponsored public meetings (1979 and May 1986). NHTSA has sought to address all pertinent aspects of the side impact problems which cover the test procedure, side impact dummy, injury criteria, and crashes as they occur in the real world.

The agency has tentatively concluded that the available information is sufficient to proceed with a proposed upgrade of the current side impact regulation FMVSS No. 214—Side Door Strength.

Based on that research, today's notice proposes to upgrade the standard by using a test procedure which simulates a two-vehicle side crash representative of the real-world side crashes that occur most frequently today. The proposed test uses a moving deformable barrier, weighing approximately 3,000 pounds, to represent a vehicle which is traveling at 30 mph and strikes the side of another vehicle which is traveling at 15 mph. To measure the magnitude of injury threat resulting from the side impact collision, the agency is proposing to use a specially developed side impact dummy. Two of these dummies would be used in a test, with one being placed on the front outboard seat and the other on the rear outboard seat on the struck side of the car.

This proposal would complement the current standard, which is primarily effective in single vehicle side impact accidents, by providing additional protection in multi-vehicle side impacts. The current standard does not directly assess the injury probabilities associated with different vehicle designs

in a specific impact. Instead, it uses the ability of the side doors to resist intrusion as a surrogate measure of the potential for injury. Today's notice would set specific performance criteria which must be met to reduce the possibility of thoracic side impact injuries without increasing harm to the pelvis. The notice would require passenger cars not to exceed specified performance limits for the thorax and the pelvis. For the thorax, the performance limits are based on a combination of peak acceleration values measured on the lower spine and the greater of the acceleration values of the upper and lower ribs of the test dummy. This notice seeks comments on the appropriateness of the proposed acceleration limits ranging from 80 g's to 115 g's. In addition, the notice seeks comments on the appropriateness of the proposed limits, ranging from 130 to 190 g's, on the peak acceleration that the pelvis should experience during the impact. Finally, to reduce the possibility of occupant ejection, the proposal would require that each door in the struck vehicle remain closed during the crash test.

To provide manufacturers with sufficient leadtime to design their passenger cars to meet the proposed performance requirements, the standard would be phased-in in accordance with the following implementation schedule:

10 percent of all cars manufactured during the first full production year (September 1 to August 31) beginning more than 24 months after the issuance of the final rule;

25 percent of all cars manufactured during the second full year beginning after that 24-month period;

40 percent of all cars manufactured during the third full year after that 24-month period; and

100 percent of all cars manufactured on or after the beginning of the fourth full year after that 24-month period.

The basis for each of those proposals is discussed in the remaining sections of the notice, which present a review of the fatality and injury experience in side impacts involving current cars, the rationales and research supporting the proposed test procedures and performance requirements, the estimated benefits of the standard, and the potential costs. A more detailed discussion of those issues is contained in the agency's Preliminary Regulatory Impact Analysis (PRIA), which has been placed in the docket for this notice.

III. The Safety Problem

The agency has separately analyzed the fatality and injury experience of

passenger car occupants involved in side impact crashes. As discussed below, the data show that side impacts account for an average of almost 8,000 fatalities and more than 23,000 serious injuries annually. These figures represent 30 percent of all passenger car occupant fatalities and 34 percent of the serious injuries that occur in passenger cars.

A. Fatalities

NHTSA reviewed available crash data from 1978 to the present to determine the number of fatalities in side impact crashes. That review showed that side impacts resulted in an average of 7,676 fatalities per year over that eight year period. The review further showed that while side impact fatalities declined steadily from about 8,300 in 1978 to about 7,000 in 1982, they increased again to about 7,400 in 1985. The percentage of all car occupants killed in side impacts averaged 30.3 percent over this eight year period. Side impact fatalities as a percentage of all occupant fatalities remained fairly constant from 1978-1982, at about 29 percent, but increased to about 32 percent in 1985.

The agency also examined the data on fatal crashes to identify the first harmful event in fatal side impact accidents. Based on a review of data from crashes in 1982-1985, the agency found that 66 percent of all side impact fatalities are due to vehicle-to-vehicle side impacts. Pole type impacts (poles, posts, fire hydrants, and trees) make up an additional 18 percent and other fixed objects (boulders, culverts, embankments, bridge abutments, guard rails, etc.) together comprise approximately 10 percent of all side impact fatalities.

The agency also examined its data files to determine what areas of the body were being injured in side impacts. Since the Fatal Accident Reporting System (FARS) does not provide information on the body region injured or the contact points, the agency examined data from the 1979-1985 National Accident Sampling System (NASS) and the 1977-1979 National Crash Severity Study (NCSS) on fatalities in which the most severe impact to the fatal occupant's vehicle was a left side or right side deformation. Only model year 1973 and later vehicles were included in this analysis to ensure that the data reflected the effect of side door beams, which were required beginning January 1, 1973, and appeared in many cars prior to that date. The data show that, for all types of side impact accidents including occupant ejections, head injuries are the most frequent

sources of side impact fatalities (47%), followed by chest (29%), neck/spine (11%), and abdomen (8%).

Many head injuries occur as a result of a person being ejected from a vehicle. Because of the increase in the usage of manual safety belts and the introduction of automatic safety belts, the agency expects that there will be a reduction in the number of persons ejected from a vehicle. Thus, the performance criteria proposed in today's notice are meant to address crashes in which an occupant is retained within the car.

NHTSA then examined the accident data to determine what type of injuries were occurring during a side impact in which there was no ejection or rollover and in which the injury-producing contact points in the vehicle's interior were known. NHTSA found that the major injury categories in side impact accidents involved impacts between a person's chest or abdomen and the vehicle's interior. Thus, NHTSA's research has focused on developing countermeasures for these types of injuries.

Today's proposal should also help reduce head and other injuries resulting from complete ejections, since it would require that all doors of a tested car remain closed during the crash test, thus reducing the possibility of ejection. In addition, NHTSA is also preparing to publish an ANPRM on a somewhat related topic. The ANPRM will request comments on several means of reducing the risk of head and neck injuries and ejections through side doors and side windows in cars. The ANPRM and this notice are related in that both address injury reduction to car occupants involved in side crashes. However, NHTSA believes they are not interdependent in that potential vehicle modifications to reduce thorax injuries (e.g., lower door padding) are not related to those that might be made to reduce head and/or neck injuries (e.g., A-pillar padding). NHTSA is not now prepared to make specific proposals on head and neck injuries and will be seeking more information and data in the ANPRM.

B. Injuries

In addition to examining the data on side impact related fatalities, the agency also reviewed data on the number of injuries in non-fatal crashes. NHTSA estimated the average number of injuries, by deformation location and the maximum Abbreviated Injury Scale (AIS) level per occupant survivor, that would have occurred in 1982-85 if all cars in the fleet were MY 1973 and later cars—that is, if they all had side door beams. (The Abbreviated Injury Scale is used to rank injuries by level of severity.

An AIS 1 injury is a minor one, while an AIS 6 injury is one that is currently untreatable and fatal.) The total estimated number of AIS 3-5 injuries (serious to critical injuries) from all crash modes is about 68,600 annually, which is based on data from the 1982-85 NASS file. That analysis showed that side impacts resulted in a total of about 23,500 AIS 3-5 injuries annually, 34 percent of all AIS 3-5 injuries. This is consistent with the fatality experience in these four years. In that time, side impacts accounted for 32 percent of all fatalities. The analysis also shows that the side interior and side hardware/armrests account for almost 52 percent of the maximum AIS 3-5 injuries for front seat occupants sitting near the struck side of the vehicle, and nearly 59 percent of the maximum AIS 3-5 injuries for rear seat occupants sitting near the struck side of the vehicle.

IV. The Proposed Test Procedure

This section discusses the size, weight, geometry, and stiffness of the moving deformable barrier that would be used in a barrier-to-car crash test. In some respects, the barrier is more representative of a car, while in others, more representative of a light truck. NHTSA requests comments whether the barrier should be more consistently representative of the population of either cars or light trucks.

A. Moving Deformable Barrier

1. General Description of the Moving Deformable Barrier

NHTSA is proposing a test procedure which simulates a typical two-vehicle side impact. The notice proposes to use the moving deformable barrier (MDB) developed by the agency in that test. The MDB is a steel structure with a 102 inch wheelbase, 63 inch track width, and has two aluminum honeycomb blocks on the front to simulate the energy absorption characteristics of a striking automobile. One block has a high compression strength of 245 psi, is 4 inches thick and is mounted 21 inches above the ground to simulate the bumper/frame of the striking vehicle. The other block has considerably lower compressive strength, i.e., 45 psi, is 15 inches thick, and is used to simulate the softer, front end structure of the striking vehicle. The front and rear wheels of the MDB can be turned to accommodate the impact angle specified below.

Complete design drawings for the MDB have been placed in Docket No. 79-04-General Reference (Item 052). NHTSA notes that while the proposed regulatory test does not include detailed

specifications for the MDB, specifications along the lines of drawings included in the docket would be included in the final rule.

2. Barrier Weight

NHTSA set the weight of the barrier to be representative of the weight of future vehicles expected to be involved as the striking vehicles in side impact crashes in the United States. Thus, NHTSA derived the weight of the barrier from the median curb weight of impacting vehicles involved in serious to fatal injury side impact cases. In multiple vehicle accidents resulting in serious injuries and fatalities, passenger cars and light/medium/heavy trucks are about equally likely to be the striking vehicle.

In 1986, the average curb weight for new passenger cars was 2820 pounds and for light trucks about 3,500 pounds. Because the overall weight of vehicles is expected to decline in the 1990's, the time when this proposed rule would be implemented, the agency set the weight of the barrier at 3,000 pounds, which represents a 2,700 pound curb weight vehicle with 300 pounds of occupants and cargo.

3. Barrier Stiffness

In developing the MDB, NHTSA originally designed the barrier to have the stiffness or crush characteristics of a 1981 Chevrolet Citation striking another vehicle in the side at an angle of 60 degrees. The stiffness or crush characteristics are controlled by the two aluminum honeycomb blocks. Together, these blocks give NHTSA's MDB an average stiffness of about 10,000 lbs. per inch for a large magnitude of crush at the proposed 90 degree impact angle. This value is at the upper end of the passenger vehicle scale (similar to an AMC Concord). Many light trucks (e.g., GMC Astro, Chevy Blazer, and Mazda B-2000), which represent a significant portion of the striking vehicles, are within this range of stiffness as well. The agency believes that the MDB front face stiffness should be higher than typical passenger car front structures and more like light trucks because trucks (as striking vehicles) are currently responsible for nearly as many serious injuries and fatalities as are passenger cars. Serious injuries and fatalities are expected to increase in the future without safety improvements because of a continuing increase in light truck popularity and increased number of smaller sized passenger cars.

4. Barrier Geometry

When NHTSA designed the barrier in 1979, the agency set the maximum and

minimum bumper heights to represent the 50th percentile values for 1979 sales-weighted, two-door sedans. All other barrier dimensions were selected by direct measurement of four 1979 model passenger cars, i.e., the Ford Fairmont, Oldsmobile Cutlass, Chevrolet Citation, and the Chevrolet Impala. In 1979, these make/models had the highest sales volumes. The bumper heights (distance between the upper and lower edges) of these 1979 cars range from about 4.6 inches to about 7.5 inches. As would be expected from the facts that the bumper height of passenger cars is regulated by the bumper standard (Part 581), this agrees well with the bumper heights of the ten best selling make/models in 1984 which range from about 4.9 inches to 7.5 inches.

5. Harmonization

There are two other side impact barriers that the agency considered in developing this proposal. One of those barriers was developed by the Committee of Common Market Automobile Constructors (CCMC) and the other was developed by the European Experimental Vehicles Committee (EEVC). The agency is concerned about using either of those barriers because it believes that they are not representative of the U.S. vehicles that are involved as the striking vehicles in side impacts. Compared to the NHTSA barrier, the CCMC and EEVC barrier weigh approximately $\frac{1}{2}$ less, are less stiff in crash tests by a factor of approximately 5, and have a lower and narrower barrier face. As stated above, NHTSA believes the NHTSA MDB stiffness and weight are appropriate because they approximate the properties found in vehicles that cause a significant number of serious injuries and fatalities. The European barriers, as currently configured, are based on the typical or average European car. The weight and front end stiffness of a typical European car is considerably lower than the weight and front end stiffness of typical U.S. cars and light trucks. NHTSA invites commenters to address these concerns and to advise the agency whether it is possible to achieve international harmonization of safety standards by modifying one or more of the above-mentioned barriers.

B. Impact Speed and Angle

NHTSA examined the data in the National Crash Severity Study (NCSS) to determine the appropriate impact velocities and impact point to be used in the crash test. By using the NCSS data, the agency determined the median speed of all side impact accidents (26 mph striker/13 mph struck), and the

median speed of the serious injury accidents (35/17.5 mph). Based on its analysis of accident data and its judgment about the threshold speed of serious injury accidents, NHTSA tentatively decided that the threshold speed of serious injury (30/15 mph) was the most appropriate test speed.

The agency also reviewed the angle of orientation between the longitudinal axis of the striking and struck vehicles and determined that 90 degree impacts were the most frequent. In view of the potential difficulty of conducting tests in which both the target and striking vehicles would be moving and in which first contact must be made at the same specified spot, the agency has devised a test in which only the striking "vehicle" is moving. Using vector analysis, the agency combined the impact speed and impact angle data and determined that the dynamics and forces of a crash in which a vehicle traveling at 30 mph perpendicularly strikes the side of a vehicle traveling at 15 mph could be represented by a test configuration in which:

- The test vehicle is stationary;
- The longitudinal centerline of the MDB is perpendicular to the longitudinal centerline of the test vehicle;
- The front and rear wheels of the MDB are crabbed at an angle of 27 degrees to the right of its longitudinal centerline in a left side impact and to the left of that centerline in a right side impact; and
- The MDB moves at that angle and at a speed of 33.5 mph into the side of the struck vehicle.

C. Impact Point

The agency examined crashes involving serious to fatal injuries to determine the median value of the impact points. The impact reference point describes the relative positions of the striking vehicle and the struck vehicle at the time of impact. In particular, NHTSA defined the impact reference point, for the purpose of a left side impact, as the position of the left forward edge (corner) of the striking vehicle when contact is first made with the left side of the struck vehicle. This definition is based on accident data which contained documentation of the damage that occurred to the side of the struck vehicle. Based on the crash data, NHTSA found that the average impact reference point was 37 inches forward of the center of the wheelbase for all car sizes. This means that for a left side impact, the left edge of the striking vehicle would be 37 inches forward of the mid-point of the wheelbase of the

struck vehicle at the time of initial contact.

V. Performance Requirements

A. Thorax

1. Development of the Performance Criterion

To assess the probability of an injury to the thorax in a side impact, the agency has developed a new injury measure called the Thoracic Trauma Index (TTI). The TTI was developed from and evaluated with test data obtained from 84 cadaver tests that have been conducted over the past 10 years. The results from those tests represent the largest biomechanical data base that has been used to support an NHTSA rulemaking action. In these instrumented cadaver tests, NHTSA was able to compare the acceleration measured on the cadaver's ribs and spine and the severity of thoracic injury received during each impact. These tests showed that the occurrence of injuries to the thorax, which includes both the ribs and the internal organs protected by the ribs, is strongly related to the peak lateral acceleration experienced by the struck side rib cage and the lower thoracic spine.

The TTI is a formula which uses the age and weight of each test subject, along with the lower thoracic spine and maximum rib accelerations to determine the probability of injury. While the calculation of benefits requires the use of the TTI, performance requirements can be specified in terms of a combination of peak rib and spine accelerations called the Thoracic Trauma Index (dummy) or TTI(d). TTI(d) is further defined in S4.1 of the proposed amendment. The benefits associated with a given TTI(d) requirement can be predicted using the TTI to assess changes across the entire vehicle fleet. The TTI(d) may be considered as the TTI where the age is zero and the weight is 165 lbs. (which is approximately the weight of the side impact dummy).

When the agency first developed the TTI, only the acceleration of the fourth rib (termed the upper rib in the TTI calculation) was measured in cadaver testing. Since then, the lateral acceleration of the eighth rib (termed the lower rib) has generally been recorded during cadaver testing. Because of this, NHTSA has revised the method of calculating the TTI and the TTI(d) by using the higher of the acceleration responses from the upper and lower rib. One beneficial effect of this change in the calculation of the TTI(d) is that it will promote the development of more balanced countermeasures that provide protection to the upper and lower thorax and the abdomen as well.

NHTSA has recently had an opportunity to evaluate further the ability of the TTI injury measure to distinguish between different AIS injury levels. The Forschungsvereinigung Automobiltechnik (FAT), an association of some 30 German motor vehicle and equipment manufacturers, sponsored a number of tests at the University of Heidelberg. These tests, (which are included in the total of 84 tests mentioned above) were designed to study lateral impacts of human cadavers, as well as three different designs of side impact dummies, seated in actual car bodies. Using the cadaver injury data, NHTSA evaluated the performance of TTI in predicting the injury severity level resulting from a lateral impact.

In the FAT tests, which were conducted on a sled, the deformable barrier developed under the auspices of the Committee of Common Market Automobile Constructors' was propelled into an Opel Kadett "body in white" in which the test subject (a human cadaver) was seated in the front seat on the struck side. Each car body was struck twice at an angle of 90°, once in the left side, and once in the right side. The speed of the barrier was either 40, 45, 50, or 60 km/hr. Each cadaver was exposed to one crash test. NHTSA's review of the test results, which is contained in the Society of Automotive Engineers paper entitled "Side Impact—The Biofidelity of NHTSA's Proposed ATD and Efficacy of TTI," (SAE Report No. 861877, Oct., 1986), again showed that TTI effectively distinguished between different levels of injury. That is, the higher the value of TTI calculated for the test, the greater was the probability of serious injury experienced by the cadaver.

2. Estimated Benefits of the Thorax Criterion

As a part of its side impact protection research program, NHTSA has conducted crash tests of 12 production passenger cars (20 crash tests) using the test conditions and anthropomorphic test dummy (side impact dummy or SID) proposed today. (The tests of the production cars are discussed in more detail in section VII of this notice.) To evaluate the effects of meeting a specified thorax performance criterion, the agency analyzed the probability of thoracic injury for each of the cars in the 20 tests using the TTI and other factors and compared this to the level of injury that would occur for each of the alternative values of the proposed TTI(d) thorax criterion. Assuming the production vehicles tested by NHTSA are representative of the total fleet of new cars, the estimated benefits for the different levels of the proposed TTI(d)

thoracic injury criterion were calculated. That is, all cases exceeding a particular chosen maximum TTI(d) were reduced to the specified level while all vehicles having lower values retained their original values. Injury distributions were then recalculated using the altered TTI(d) values. Results are shown in Table 1.

TABLE 1—THORAX BENEFITS FOR DIFFERENT MAXIMUM LEVELS OF TTI (D) PERFORMANCE IN THE BASELINE FLEET

TTI(d)	(Reductions in injuries/fatalities)				Fatalities
	AIS 3	AIS 4	AIS 5	Total AIS 3-5	
80	3,582	364	175	4,122	1,238
85	3,059	303	136	3,498	1,001
90	2,510	240	118	2,867	866
95	1,921	179	87	2,197	718
100	1,393	127	75	1,595	553
105	931	83	54	1,068	397
110	539	47	39	625	285
115	247	21	22	291	162

Since restraint system usage reduces fatalities and injuries in side impacts, the agency also examined how increased safety belt usage, as a result of either state safety belt use laws or automatic restraints, would affect the estimated benefits expected from the use of structural modification and increased padding to improve side impact protection. In determining the effect of restraint system usage on side impact protection, the agency made a number of assumptions, which are discussed in detail on pages IV-43 through IV-55 of the PRIA.

The agency assumed that manual or automatic safety belt usage would be in the 40-70 percent range. NHTSA also examined the available accident data and estimated the effectiveness of restraint systems in reducing torso injuries in side impacts. That review showed that safety belts are less effective in reducing torso injuries in side impacts than they are in reducing injuries to other portions of the body in side impacts. Based on the accident data, NHTSA estimated that, for the occupant on the struck side, manual safety belts would be 19-26 percent effective in reducing upper torso related side impact fatalities and 23-30 percent effective in reducing AIS 3-5 injuries. NHTSA further estimated that automatic safety belts would be 18-25 percent effective in reducing upper torso related side impact fatalities and 21-28 percent effective in reducing AIS 3-5 injuries. Applying these estimates, NHTSA determined that approximately 5-14 percent of the potential reduction in fatalities and 6-16 percent of the

potential benefit in reducing AIS 3-5 injuries would already be achieved by increases in safety belt usage before in final side impact rule was fully implemented. Thus, the agency reduced the estimated effectiveness of the proposed side impact requirements by the expected benefits of increased restraint use and derived the final benefit estimates shown in Table 2. As with any requirements for new vehicles, the benefits accrue over the 10-15 year life of the model year fleets affected.

TABLE 2—ESTIMATED THORACIC BENEFITS RESULTING FROM THE SIDE IMPACT PROPOSAL AFTER MAKING ADJUSTMENTS FOR RESTRAINT USAGE

[Thoracic Benefits]		
TTI(d)	AIS 3-5	Fatals
80	3,503-3,913	1,072-1,185
85	2,967-3,319	865-957
90	2,426-2,718	747-828
95	1,885-2,082	618-696
100	1,343-1,510	476-529
105	897-1,010	341-379
110	524-591	244-272
115	244-275	139-155

3. Alternative Thoracic Injury Criterion

General Motors has developed what is known as the viscous injury criterion (VC) for use in analyzing soft tissue injuries in frontal impacts. This injury criterion is based on the product of the instantaneous thorax compression (C) and its rate of compression (V) that occurs during impact. At the agency's 1986 public meeting on side impact protection, GM urged the adoption of a VC criterion for measuring the potential for injury in side impacts.

Although NHTSA believes that the work GM has done in frontal impacts using the VC criterion shows that such an approach may be promising, there are, at this time, not data to support adopting the VC as a criterion for assessing vehicle safety in side impacts. A further drawback to the use of the VC criterion at this time is that there are no dummies (including the agency's existing SID) that have been designed with biofidelity for measurement of lateral VC. Although the side impact dummy (known as the EUROSID) being developed by the European safety community will be able to measure chest compression, this dummy is still undergoing evaluation. Further, it is not known whether these measured displacements will be appropriate with respect to biofidelity. For additional discussion of the EUROSID dummy, see today's Federal Register notice on the agency's proposed new side impact test dummy.

In contrast to the VC criterion, the agency has a substantial amount of

cadaver impact tests that indicate that the TTI(d) proposed in this notice is a reliable predictor for thoracic injuries. In addition, the agency has developed a reliable test dummy (SID) that can be used to measure performance using the acceleration based criterion (TTI(d)). At this time, NHTSA believes that the TTI(d) is fully adequate for use in this proposal and that much more additional information is needed before the agency can evaluate the effectiveness and reliability of the viscous injury criterion in assessing side impact injuries. When and if additional biomechanical information is available of the adequacy of the VC criterion in side impacts, the agency will consider that information to determine whether it should be proposed.

B. Pelvis

NHTSA has done research to develop criteria to limit pelvic injury in side impacts. The research, which has been published in a paper, "Synthesis of Pelvic Fracture Criteria for Lateral Impact Loading," presented at the Tenth International Technical Conference of Experimental Safety Vehicles, reviewed data from the above-mentioned 84 cadaver impact tests which measured the acceleration of the pelvis. (The agency used the same cadaver data in setting the proposed injury criterion for the thorax.) As a result of that review, the agency developed estimates of the probability of pelvic fracture for different acceleration levels measured in the pelvis of the cadavers.

The agency is concerned that certain design modifications could reduce thoracic response by shifting the load path into the pelvis. A pelvic injury criterion has been proposed to prevent worsening of pelvic protection.

To evaluate the effects of requiring cars to meet various maximum pelvis acceleration levels, the agency estimated the probability of pelvic injury for each of the 12 production passenger cars that were crash tested by the agency in one of its research programs. The test results showed that approximately 17 percent of the front seat occupants and 11 percent of the rear seat occupants would receive a fractured pelvis as a result of the acceleration experienced in those crash tests. The agency then calculated the expected benefits derived from having vehicles comply with various limits on pelvic acceleration levels. Those results are shown in Table 3.

TABLE 3—ESTIMATED PELVIC FRACTURE INJURY REDUCTION

Alternative levels of peak pelvic g's	Front seat near side	Front seat far side	Rear seat near side	Total
130	959	31	35	1,025
150	718	25	7	750
170	486	17	7	510
190	30	1	0	31

As was done with the estimates of the potential thoracic benefits, the agency then recalculated the pelvic benefit estimates to take into account the effects of increased safety belt usage. The agency used the same restraint system usage estimates and effectiveness estimates used in the thorax analysis. The recalculated benefits are shown in Table 4.

TABLE 4—ESTIMATED PELVIC BENEFITS RESULTING FROM THE SIDE IMPACT PROPOSAL AFTER MAKING ADJUSTMENTS FOR RESTRAINT USAGE

Alternative levels of peak pelvic G's	Non-fatal fractures
130	864-971
150	629-709
170	428-482
190	26-29

C. Prohibiting Door Openings

The potential benefits of requiring the doors to remain closed during the side impact consist of reducing the number of persons who are ejected from a car through a door and strike an object outside the car. After reviewing the results of the 12 vehicle crash tests, the agency found that four of the vehicles had a door open during the crash. NHTSA then estimated the number of ejections that occur in side impacts and evaluated the potential effectiveness of keeping the door closed in reducing occupant deaths and injuries. The agency estimates that the proposed requirement has the possibility of reducing 106 fatalities and 167 serious to critical injuries annually.

As with its other benefit estimates, the agency then calculated the effect of increased restraint system usage on the level of benefits to be derived from the proposed door requirement. Since the prevention of ejection is one of the prime benefits of safety belt use, an increase in restraint system use would have a larger effect on reducing the estimated benefits of the door retention requirement than on reducing the benefits of the proposed thorax or pelvis requirements. Taking into account the effect of increased safety belt usage, the agency estimates that the proposed door retention requirement would reduce 59-

85 fatalities and 88-131 AIS 3-5 injuries annually.

D. Test Procedure

The proposed test procedures provide that a test dummy is to be restrained during a test only if that dummy is located in a seating position equipped with an automatic belt. This provision is proposed because, although belt usage is increasing, through the passage of mandatory use laws and a growing awareness of safety on the part of consumers, manual restraint usage is unlikely to reach 100 percent. Thus, the agency desires to assure protection for unrestrained occupants. Recent accident data analyses indicate that belt type restraints may be somewhat beneficial in side impacts. Unrestrained testing should, therefore, be on the conservative side. Also, the unrestrained dummy is generally propelled to the far side of the vehicle in a side impact test, thus creating the potential of causing the far side door to open. Allowing this to occur would aid in evaluating the capability of the far side door to remain closed during a side impact crash, which is a requirement in this proposal. For manual belt systems, or manual belts used to supplement automatic restraint systems, the agency's limited testing leads to uncertainty whether such restraint use affects compliance with the proposed requirements. Thus, the agency seeks comments on whether compliance testing should be conducted with restrained or unrestrained dummies and the reasons therefore.

Component test procedures may eventually be possible alternatives to the agency's proposed side impact test which uses a moving deformable barrier and the side impact dummy to measure vehicle safety. The agency is aware that various industry organizations have conducted considerable research toward the development of devices and procedures for side component tests. Particularly prominent in this area is the recent work sponsored by the Motor Vehicle Manufacturers Association (MVMA) which used the 1985 Ford LTD as the base vehicle. See "Status and Update of MVMA Component Testing," SAE Report No. 871116. Although this program essentially demonstrated the feasibility of the MVMA component approach for the Ford LTD, the problems which still remain indicate that it may not be possible to develop a component test procedure utilizing a single set of requirements (involving specified ram face dimensions to achieve a prescribed magnitude of side structure pre-crush coupled with the impact speed of a

simulated thorax) that would be adequately applicable to all vehicles considering the wide range of vehicle sizes and side structural characteristics.

Volkswagen AG recently reported results from their studies on a component procedure which is considerably different from the MVMA approach. See "Component Test Procedure For Side Impact Protection," SAE Report No. 871117. This procedure is a composite of test and analysis, but is subject to the same problem of appropriate application to all vehicles as noted above.

It is apparent that the component approach has some potential beneficial features (particularly for the use by a manufacturer in the early stages of vehicle design). While the agency believes that the concept needs additional research, it encourages the further development of this approach. Comments on this subject are specifically solicited.

VI. Feasibility of the Countermeasures

NHTSA has performed a substantial number of vehicle crash tests to examine the existing side impact performance for many cars, as determined by the TTI(d) and pelvis acceleration measured on the side impact test dummy, and to evaluate the effectiveness of various techniques to improve side impact performance. In particular, the research programs have concentrated on making production feasible structural changes and adding additional padding to the interior surface of the vehicle's side door to improve side impact protection. As discussed in more detail below, this research has shown that the use of structural modifications in combination with padding or the use of padding alone can reduce the probability of thoracic and pelvic injuries.

The following discussion highlights several of the more important side impact research programs conducted by NHTSA. The details of these and other agency research programs are discussed more fully in the Preliminary Regulatory Impact Analysis. In 1977, NHTSA began a program to improve the side structure integrity for lightweight subcompact cars using a 2-door Volkswagen Rabbit. The agency decided to concentrate its research efforts on light vehicles, because it anticipated having the greatest difficulty in improving the level of side impact protection in those vehicles. The agency also believes that any countermeasures developed for those vehicles could more easily be adapted for use in larger and heavier

vehicles. NHTSA chose the VW Rabbit after testing the side impact performance of three small front wheel drive vehicles. The peak thoracic and pelvic accelerations measured on the side impact test dummy seated in the Rabbit indicated the Rabbit to be an "average" performer in its class.

The research program developed four levels of structural modifications to the 2-door VW Rabbit to investigate the effect of increased side strength on intrusion. Those levels were categorized by the weight that the modifications added to the car and were designated as lightweight, middleweight, heavyweight and "optimized" (the "optimized" version used parts that had performed well in tests of the three other designs, but had been reduced in weight). These structural additions focused on the front seat area; no structure was added to the rear quarter panel or C-pillar areas. Intrusion was reduced by a factor of nearly 50 percent (from approximately 20 inches to 10 inches) with the heavy and optimized weight designs, but the dummy peak accelerations were not significantly altered.

Concurrently with the programs to improve the structural integrity of the vehicle, NHTSA also conducted research at its Vehicle Research and Test Center in East Liberty, Ohio to select and evaluate interior padding. The interior padding was an "add-on" feature so that the door structure did not require alteration to accommodate the padding. The agency assumed that manufacturers would incorporate these features in production vehicles by using the door structure itself and part of the door thickness so as to minimize the space taken from the occupant compartment.

In January 1981, NHTSA began another research effort conducted in two parts. This was called the modified integrated vehicle (MIV) program. One part was conducted by VW to improve the side impact protection of a 4-door VW Rabbit and the other part was conducted by MCR Technology Inc. using the Chevrolet Citation. The program evaluated both structural modifications and padding changes, independently and combined. The first phase of the research effort concentrated on developing "production feasible" improvements, which would add little weight to the vehicle. To evaluate the performance of the modifications, the agency conducted a series of tests on the Rabbit simulating a vehicle moving at 22 mph striking another vehicle moving at 11 mph. The

impact angle was 60 degrees. The agency's MDB was used as the striking vehicle. These tests involved an unmodified VW Rabbit, a structurally unmodified Rabbit with additional interior padding, a structurally modified Rabbit with no additional interior padding, and finally a structurally modified Rabbit with additional interior padding.

In the second phase of the MIV program, the agency tested the structurally modified and padded Rabbit in two additional impact configurations. The configurations simulated a vehicle moving at 30 mph striking another vehicle moving at 15 mph at impact angles of 60 degrees and 90 degrees. In these tests, a Chevrolet Citation was used as the striking vehicle.

In summary, NHTSA's testing shows that it is possible to develop "production feasible" countermeasures that can reduce potential thorax and pelvic injuries in side impacts. Based on the results obtained in this testing, NHTSA has, as discussed below, developed estimates of the effectiveness of different side impact countermeasures in reducing injuries.

VII. Estimate of Needed Improvement in the Vehicle Fleet

In addition to the testing which was done on the modified and unmodified Rabbits and Citations, NHTSA has also conducted a series of 20 tests on 12 different unmodified passenger cars. (In some cases, a 2-door and 4-door version of the same model were tested and, in other cases, there were repeat tests of the same models. One test was for a completely redesigned vehicle.) The agency tested these vehicles in the impact configuration and test speed proposed in this notice. The vehicles tested were the AMC Concord, Chevrolet Celebrity, Chevrolet Citation (2-door and 4-door models), Chevrolet Spectrum, Dodge 400, Dodge Omni 2-door/Plymouth Horizon 4-door, Ford Granada (2-door and 4-door models), Honda Civic, Mazda 626, Nissan Sentra, including its MY 1987 redesign, and VW Rabbit.

NHTSA used the results from the tests of the production vehicles to estimate the percentage of the passenger car fleet that currently meets the proposed alternative levels of the standard. In assessing the changes needed in current vehicles to meet the standard, the agency has not calculated the effectiveness for modifications that only involve structural changes. There were six cases of comparable baseline versus structure alone tests. In three of these tests for the driver, the TTI(d) went up and in three tests, the TTI(d) went

down. A number of other tests have shown relatively little or no benefit from structure alone countermeasures. Because of these results, the agency does not consider the structural countermeasure it developed as a consistent means to reduce side impact injuries. This does not mean that countermeasures using only structural modifications will not work. It simply means that the approaches evaluated by the agency did not consistently work.

Table 5 shows the percentage of the current passenger car fleet meeting the various alternative levels of thorax acceleration at different seating positions in a car. The agency requests manufacturers to provide additional side impact test results so that the agency can refine its analysis of the percentage of the fleet currently meeting the alternatives. The agency has examined the effects of setting the TTI(d) limit between the values of 80 and 115 g's for the thorax.

TABLE 5—PERCENT OF THE FLEET MEETING ALTERNATIVE LEVELS FOR THE THORAX

TTI(d)	(In percent)		
	Driver	Rear passenger	Both positions
80	16.7	25.0	8.3
85	25.0	25.0	8.3
90	25.0	41.7	8.3
95	41.7	58.3	25.0
100	50.0	66.7	33.3
105	50.0	83.3	50.0
110	58.3	91.6	58.3
115	66.7	100.0	66.7

Table 6 presents estimates of the percentage of the fleet that would need various countermeasures to meet the various levels of the TTI(d) being considered for the standard. The percentage of the fleet is derived by assuming the effectiveness of the countermeasures as follows: for drivers—padding is approximately 21 percent effective, structure and padding is about 30 percent effective, and heavyweight structure and padding is 43 percent effective. For rear passengers, padding alone is also assumed to be 35 percent effective. The agency derived these effectiveness estimates based on the performance improvements resulting from the use of various side impact protection countermeasures in cars. The agency then applied these effectiveness estimates to the thoracic acceleration results of each of the 12 production cars and the results were then compared to the alternative level of the standard being proposed to determine which countermeasure is needed for each vehicle.

TABLE 6—PERCENT OF THE FLEET NEEDING VARIOUS COUNTERMEASURES TO MEET ALTERNATIVE LEVELS OF THE STANDARD FOR THE THORAX

TTI(d)	Driver				Rear passenger	
	(In percent)				(In percent)	
	None	Padding	Structure and padding	Heavyweight structure and padding	None	Padding
80	16.7	33.3	16.7	33.3	25.0	75.0
85	25.0	33.4	33.3	8.3	25.0	75.0
90	25.0	41.7	25.0	8.3	41.7	58.3
95	41.7	50.0	8.3	0.0	58.3	41.7
100	50.0	41.7	8.3	0.0	66.7	33.3
105	50.0	50.0	0.0	0.0	83.3	16.7
110	58.3	41.7	0.0	0.0	91.6	8.3
115	66.7	33.3	0.0	0.0	100.0	0.0

Table 7 indicates the percentage of the fleet meeting various alternative standards for pelvic g's.

TABLE 7—PERCENT OF FLEET MEETING ALTERNATIVE LEVELS FOR PELVIC ACCELERATION

Pelvic acceleration	(In percent)		
	Driver	Rear passenger	Both
130	0	33.3	0
150	27.3	91.7	27.3
170	54.5	91.7	45.5
190	72.7	100.0	72.7

Table 8 presents the percentage of the fleet that would need various countermeasures to meet the alternative levels of the pelvic g's standard being analyzed. The percentage of the fleet needing each countermeasure is derived by assuming effectiveness as follows: for drivers—padding is approximately 35 percent effective, structure and padding is approximately 40 percent effective, and heavyweight structure and padding is 57 percent effective. For rear passengers, padding is approximately 33 percent effective. These effectiveness estimates are applied to each of the 12 cars' pelvic acceleration levels (except for the missing driver's pelvic acceleration reading in the Celebrity) and the results are compared to the alternative level of the standard being examined to determine which countermeasure is needed for each vehicle.

TABLE 8—PERCENT OF FLEET NEEDING VARIOUS COUNTERMEASURES TO MEET ALTERNATIVE LEVELS OF THE STANDARD FOR PELVIC ACCELERATION

	Driver			Rear passenger	
	Pelvic acceleration			(In percent)	
	(In percent)			None	Padding
	None	Padding	Structure and padding		
130	0	90.9	9.1	33.3	66.7
150	27.3	72.7		91.7	8.3
170	54.5	45.5		91.7	8.3

TABLE 8—PERCENT OF FLEET NEEDING VARIOUS COUNTERMEASURES TO MEET ALTERNATIVE LEVELS OF THE STANDARD FOR PELVIC ACCELERATION—Continued

	Driver			Rear passenger	
	Pelvic acceleration			(in percent)	
	(in percent)				
	None	Padding	Structure and padding	None	Padding
190	72.7	27.3	.....	100.0	0.0

VIII. Costs

As a part of its research program on side impacts, NHTSA has done several major studies of the potential costs associated with improving side impact protection. The first cost study was based on the work begun in 1980 with the Budd Company to develop several structural modifications for improving the side impact design of subcompact two-door sedans. As discussed earlier in this notice, the Budd Company developed four alternative side structure designs based on the 1976/1977 VW Rabbit two-door passenger sedan. The production version VW Rabbit was used as a baseline for comparing the weight, cost, and crash impact performance of the four modified design versions.

The four design concepts were categorized by the total added weight of the modifications to the car and were designated as a lightweight design, middleweight design, heavyweight design and an "optimized" design. The crash test results for the lightweight and middleweight designs showed that none of the structural modifications described above sufficiently improved side impact protection as measured by reductions in thoracic acceleration. The heavyweight and optimized designs showed some promise of reducing side impact injuries and consequently, the agency used those designs in calculating the cost associated with this proposed rulemaking.

Subsequent to completion of the work by Budd, NHTSA sponsored several studies to analyze the costs and manufacturing feasibility of structural modifications and increased padding to improve side impact protection. Those studies have concentrated on examining approaches that would support the type of vehicle construction techniques that would be used in efficient high-volume production using more sophisticated tools. Those studies found that the types of modification examined by the agency could be simplified if a vehicle manufacturer planned to incorporate the side impact features into a new vehicle design. In particular, the studies found

that many of the parts used by the agency in its original research program could be modified, combined, eliminated, or incorporated into the basic original structural members using the original tools. In addition to examining the costs of structural improvements, the agency has also analyzed the costs associated with the addition of padding.

The costs and weight changes derived using the modified vehicle tests conducted several years ago, where the primary purpose of the modifications was to reduce intrusion, represent relatively high values for both costs and weights. As discussed earlier, the test results showed that structural improvements alone did not necessarily result in significant reductions in thoracic acceleration, an injury criterion being proposed by the agency in this notice.

The agency believes that a more effective and efficient approach for reducing occupant thorax and pelvis injury in side impacts is to provide equivalent padding (either actual padding or modified, energy-absorbing sheet-metal structure) as necessary in the door area. This should be more efficient for these types of injuries, and have much lower associated costs. This has been demonstrated by actual production vehicles. For example, the 1987 Nissan Sentra incorporated significant improvements, at a cost of apparently less than \$100 over the earlier version of this model, to considerably improve both the frontal and side forces on vehicles occupants. Also, there are some designs of small and other cars tested by NHTSA that already have relatively good side impact performance for the driver (e.g., Concord 4-door with TTI(d) of 72.5, Spectrum 2-door with TTI(d) of 83.5, Celebrity with TTI(d) of 79.0. In addition, 25 percent of the rear seat passengers of the cars tested by NHTSA had TTI(d) values below 85 g's. Since a number of cars demonstrate very good side impact performance without special addition of countermeasures (i.e., only configurational differences), the agency believes that other vehicles could also be redesigned to improve performance at little increase in consumer costs. The agency's judgment is that individual models can have overall lifetime costs of meeting requirements down to the 85 TTI(d) level of somewhere between zero and \$100 (additional fuel and secondary weight costs included). The overall fleet-weight costs of the 85 TTI(d) level, for example, could be less than \$50 per vehicle, if sufficient leadtime is provided such that most vehicles can be designed

with the side impact requirements in mind.

NHTSA combined the estimates of the vehicle modification costs, including the fuel economy and secondary weight costs, associated with different types of side impact protection modifications and the estimates of the percentage of the fleet that would need modifications to meet various thorax and pelvis acceleration levels. These total costs range from fleet averages of \$8 to averages of over \$100 per car, depending on the injury level selected and assumptions on secondary weight factors.

NHTSA wants to emphasize that the costs of the proposed requirements are expected to be significantly lower than the estimates derived from its outdated cost studies. The NHTSA tests showed that some existing vehicles could meet various proposed levels of safety with little modifications. This suggests there are less costly ways of upgrading side impact protection. The improved performance of some existing cars appears to be due to the larger cross-sectional thickness of the door and quarter panels of those particular vehicles. This would create better performance due to the outer and inner panels not being completely crushed together as the door is being pushed into the passenger compartment, prior to dummy contact. This also allows the inner panel to absorb some of the dummy's energy before being crushed into the outer panel and the ensuing rigid barrier.

The agency believes that future model designs, by manufacturers who do not have this cross-sectional thickness feature, can incorporate this design concept, resulting in lower safety improvement costs for most vehicles.

Considering that most of the vehicles NHTSA has tested are not likely to be in the fleet 5 years after implementation of the final rule when the standard becomes fully effective, and that a phase-in procedure is proposed, the agency believes that it is reasonable to assume that manufacturers would incorporate safety improvements in their clean-sheet design of most new models to comply with the standard prior to and at the time of full implementation. This approach will entail research and development, engineering, and testing expenses in order to meet the standard, but perhaps, with very little added cost per vehicle.

The agency has not designed and tested countermeasures to prevent door openings during the compliance tests. Thus, specific cost estimates for measures to meet this provision of the

proposal are not available. However, based on its November 1982 evaluation of Standard No. 214, the agency believes that reductions in the possibility of door openings are feasible through structural improvements made to reduce the TTI(d) and pelvic g's. The 1982 evaluation found that the inclusion of side door beams reduced the incidence of door openings by 20-40 percent in single vehicle crashes and 10-30 percent in multi-vehicle crashes. The agency believes that further reductions are possible as a by-product of measures adopted to comply with the proposed injury criteria. Thus, the costs of reducing door openings are believed to be included in the above-mentioned costs, or, in the alternative, are estimated to be relatively small, on the order of \$2-\$4 per vehicle affected. It is estimated that only a small portion of the fleet would be so affected. Comments are specifically requested on these assumptions.

In addition to the costs associated with designing and producing the countermeasures needed to meet the proposed performance requirements, today's proposed rule also would result in some test equipment costs. The SID dummy is basically a Part 572 dummy with a modified thorax that uses thoracic and pelvic acceleration to measure impact loads. NHTSA estimates that buying a complete new SID dummy would cost approximately \$22,000. However, with the phase-in implementation of the Hybrid III Dummy required to meet FMVSS 208 compliance certification in the future, many of the existing Part 572 dummies could be modified to meet the SID requirements at a substantial savings to the manufacturers.

In addition to the cost of the dummy, there are costs associated with calibrating the dummy, purchasing replacement parts and performing the dynamic crash test. NHTSA estimates the total incremental cost per dummy per test application to be approximately \$2,500. In addition, the estimated cost of the NHTSA MDB is approximately \$23,000 with instrumentation. This does not include expendable aluminum honeycomb face and bumper, which, at present, has to be replaced after each test, and is estimated to be an additional \$2,100 per test.

IX. Leadtime

The leadtime needed to comply with the proposed range of requirements might vary markedly from manufacturer to manufacturer. As discussed earlier, depending on the level of the performance requirements adopted in the final rule, some manufacturers may

need little change in some of their models. In addition, for manufacturers that only need to adopt padding countermeasures, the leadtime is relatively short. Based on engineering judgment, the agency believes the normal leadtime to design, tool and test new interior trim panels and arm rests is approximately 14 to 18 months. However, manufacturers needing to adopt either the optimized or heavyweight structural modifications and padding could need significant amounts of leadtime.

In instances where a manufacturer can make the needed structural modifications by making minor design changes to such vehicle structures as the door and the "A" and "B" pillars, it is possible to make those changes with approximately two years of leadtime. However, unlike approaches that use padding only or minor alterations to existing vehicle parts, some passenger cars may need significant improvement to the vehicle body shell to comply with the standard. Thus, if significant revisions are necessary, some vehicle models may require as much as five years of leadtime to develop, design, and produce the needed changes. The agency believes that the best approach to addressing the varying leadtime requirements is to phase-in the standard. This will allow manufacturers that can use the relatively straightforward padding approach in some of their models, to adopt that countermeasure in the early years of the phase-in. A phase-in approach will also provide sufficient time for manufacturers to design, develop, and produce significant structural modifications for those vehicles that need major changes.

X. Effect on the Current Version of Standard No. 214 and Other Standards

As discussed in the beginning of this notice, agency research has shown that the requirements of current Standard No. 214 have been effective in reducing fatalities and injuries in single vehicle impacts. The agency believes that the primary reason for the effectiveness of the current standard is that it reduces intrusion into the vehicle. The amendments proposed today do not include any limits on intrusion, but instead place limits on the acceleration experienced by a side impact test dummy in a simulated side impact.

Given the effectiveness of the current requirements, NHTSA is proposing to retain them even if it adopts the new performance requirements being proposed today. The agency notes that, for convenience, the proposed regulatory text does not repeat the

existing requirements, but instead sets forth the new performance requirements as a new Standard No. 214 which would replace the existing requirements. If the agency decides to adopt the proposed new requirements, it would issue a final rule combining the new and existing requirements into Standard No. 214. However, the agency requests comments on retaining the existing requirements of Standard No. 214, if the proposed new performance requirements are adopted.

The agency also requests commenters to address whether the agency should adopt a separate limitation on intrusion that occurs during the simulated side impact test proposed today.

Standard No. 201, *Occupant Protection in Interior Impact*, also contains requirements that are aimed at reducing injuries in side impacts. Section 5.3 of that standard sets requirements for the armrests used in vehicles. The purpose of those requirements is to reduce the potential for thoracic and pelvic injuries. Since the amendments proposed today include limits on pelvic and thoracic acceleration, the agency requests comments on whether the final rule should delete the Standard No. 201 requirements insofar as they apply to (a) armrests built into the interior surface of the side doors, and (b) folding armrests.

XI. Phase-in of New Requirements

As discussed above, NHTSA is proposing to phase-in the new requirements. While the proposed regulatory text does not specify the phase-in requirement, the agency contemplates adding regulatory text along the lines used to express the phase-in of automatic restraint requirements of Standard No. 208, *Occupant Crash Protection*. See § 4.1.3 through § 4.1.3.5.2 of Standard No. 208 and 49 CFR Part 585. NHTSA requests comments on this approach. Specific regulatory text would be set forth in a final rule.

XII. Regulatory Impacts

A. Executive Order 12291

NHTSA has examined the impact of this rulemaking action and determined that it is major within the meaning of Executive Order 12291, and significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has prepared a Preliminary Regulatory Impact Analysis describing the economic and other effects of this rulemaking action. The analysis is available in the docket.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

Few, if any, passenger car manufacturers would qualify as small entities. Small organizations and governmental units should not be significantly affected since the potential increases associated with this proposed action should only slightly affect the purchase price of new motor vehicles.

C. Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

D. Paperwork Reduction Act

The reporting and recordkeeping requirements proposed in section XI of the preamble of this notice in connection with the phase-in of the new requirements are considered to be information collection requirements as that term is defined by the Office of Management and Budget in 5 CFR Part 1320. Accordingly, those proposed requirements are being submitted to OMB for its review pursuant to the Paperwork Reduction Act. Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Office for NHTSA. It is requested that comments sent to OMB also be sent to the NHTSA rulemaking docket for this proposed action.

XIII. Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted. All comments must be limited to 15 pages in length. (49 CFR Part 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information,

should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR Part 571 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.214 would be revised to read as follows:

§ 571.214 Side impact protection.

S1 Scope. This standard specifies performance requirements for protection of passengers in side impacts.

S2 Purpose. The purpose of this standard is to reduce the risk of serious and fatal injury to occupants of passenger cars in side crashes by specifying vehicle crashworthiness requirements in terms of accelerations measured on anthropomorphic dummies in test crashes and by other means.

S3 Applicability. This standard applies to passenger cars.

S4 Performance requirements. When tested under the conditions of S5, each passenger car shall meet the requirements of 4.1, 4.2, and 4.3 in a 33.5 mile per hour impact in which the car is struck in either side by a moving deformable barrier. Part 572, Subpart F test dummies are placed in the front and rear outboard seating positions on the struck side of the car.

S4.1 Thorax. The Thoracic Trauma Index shall not exceed [a range of values between 80 and 115 is being considered] when calculated in accordance with the following formula:

$$TTI(d) = \frac{1}{2}(G_R + G_{LS})$$

The term " G_R " is the greater of the peak accelerations of either the upper or lower rib, expressed in g's and the term " G_{LS} " is the lower spine peak acceleration, expressed in g's. The peak acceleration values are obtained in accordance with the procedure specified in S5.12.5.

S4.2 Pelvis. The peak lateral acceleration of the pelvis, as measured in accordance with S5.12.5, shall not exceed [a range of values between 130 and 190 is being considered] g's.

S4.3 Door opening.

S4.3.1 Any side door, which is struck by the moving deformable barrier, shall not separate totally from the car.

S4.3.2 Any door (including a rear hatchback or tailgate), which is not struck by the moving deformable barrier, shall meet the following requirements:

S4.3.2.1 The door shall not disengage from the latched position;

S4.3.2.2 Neither the latch nor the hinge systems of the door shall separate; and

S4.3.2.3 Neither the latch nor the hinge systems of the door shall pull out of the anchorage.

S5 Test conditions.

S5.1 Test weight. Each passenger car is loaded to its unloaded vehicle weight, plus its rated cargo and luggage capacity, secured in the luggage area, plus the weight of the necessary anthropomorphic test dummies. The car's fuel system is filled in accordance with the following procedure. With the test vehicle on a level surface, pump the fuel from the vehicle's fuel tank and then operate the engine until it stops. Then, add Stoddard solvent to the test vehicle's fuel tank in an amount which is equal to not less than 92 percent and not more than 94 percent of the fuel tank's usable capacity stated by the vehicle's manufacturer. In addition, add the amount of Stoddard solvent needed to fill the entire fuel system from the fuel

tank through the engine's induction system.

S5.2 Vehicle test attitude. Determine the distance between a level surface and a standard reference point on the test vehicle's body, directly above each wheel opening, when the vehicle is in its "as delivered" condition. The "as delivered" condition is the vehicle as received at the test site, with 100 percent for all fluid capacities and all tires inflated to the manufacturer's specifications listed on the vehicle's tire placard. Determine the distance between the same level surface and the same standard reference points in the vehicle's "fully loaded condition." The "fully loaded condition" is the test vehicle loaded in accordance with S5.1. The load placed in the cargo area is centered over the longitudinal centerline of the vehicle. The pretest vehicle attitude is equal to either the as delivered or fully loaded attitude or between the as delivered attitude and the fully loaded attitude.

S5.3 Adjustable seats. Adjustable seats are placed in the adjustment position midway between the forwardmost and rearmost positions, and if separately adjustable in a vertical direction, are at the lowest position. If an adjustment position does not exist midway between the forwardmost and rearmost positions, the closest adjustment position to the rear of the midpoint is used.

S5.4 Adjustable seat back placement. Place adjustable seat backs in the manufacturer's nominal design riding position in the manner specified by the manufacturer. Place each adjustable head restraint in its highest adjustment position. Adjustable lumbar supports are positioned so that the lumbar support is in its lowest adjustment position.

S5.5 Adjustable steering wheels. Adjustable steering controls are adjusted so that the steering wheel hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions.

S5.6 Windows. Movable vehicle windows and vents are placed in the fully closed position on the struck side of the vehicle.

S5.7 Convertible tops. Convertibles and open-body type vehicles have the top, if any, in place in the closed passenger compartment configuration.

S5.8 Doors. Doors, including any rear hatchback or tailgate, are fully closed and latched but not locked.

S5.9 Transmission and brake engagement. The transmission is placed in neutral and the parking brake disengaged.

S5.10 Moving deformable barrier. The moving deformable barrier conforms to the dimensions shown in Figure 1.

S5.11 Impact reference line. On the side of the vehicle that will be struck by the moving deformable barrier, place a vertical reference line which is 37 inches forward of the center of the vehicle's wheelbase.

S5.12 Impact configuration. The test vehicle (vehicle A in Figure 2) is stationary. The line of forward motion of the moving deformable barrier (vehicle B in Figure 2) forms an angle of 63 degrees with the centerline of the test vehicle. The longitudinal centerline of the moving deformable barrier is perpendicular to the longitudinal centerline of the test vehicle when the barrier strikes the test vehicle. In a test in which the test vehicle is to be struck on its left (right) side: all wheels of the moving deformable barrier are positioned at an angle of 27 ± 1 degrees to the right (left) of the centerline of the moving deformable barrier; and the left (right) forward side of the moving deformable barrier is aligned so that a longitudinal plane tangent to that side passes through the impact reference line when the barrier strikes the test vehicle.

S5.13 Anthropomorphic test dummies.

S5.13.1 The anthropomorphic test dummies used for evaluation of a vehicle's side impact protection conform to the requirements of Subpart F of Part 572 of this Chapter.

S5.13.2 Each Part 572, Subpart F test dummy specified is clothed in formfitting cotton stretch garments with short sleeves and midcalf length pants. Each foot of the test dummy is equipped with a size 11EE shoe which meets the configuration size, sole, and heel thickness specifications of MIL-S-131192 and weighs 1.25 ± 0.2 pounds.

S5.13.3 Limb joints are set at lg. Leg joints are adjusted with the torso in the supine position.

S5.13.4 The stabilized temperature of the test dummy at the time of the side impact test shall be at any temperature between 66 degrees F. and 78 degrees F.

S5.13.5 The acceleration data from the accelerometers mounted on the ribs, spine and pelvis of the test dummy are processed in the following manner:

S5.13.5.1 Filter the data with a 300 Hz, SAE Class 180 filter;

S5.13.5.2 Subsample the data to a 1600 Hz sampling rate; and

S5.13.5.3 Filter the data with a Finite Impulse Response (FIR) filter having the following characteristics—

S5.13.5.3.1 Passband frequency, 100 Hz.

S5.13.5.3.2 Stopband frequency, 189 Hz.

S5.13.5.3.3 Stopband gain, -50 db.

S5.13.5.3.4 Passband ripple, 0.0225 db.

S6 Positioning procedure for the Part 572 Subpart F Test Dummy. Position a test dummy, conforming to Subpart F of Part 572 of this Chapter, in the left front outboard seating position on the struck side of the test vehicle and another conforming test dummy in the left rear outboard position on the same side of the vehicle, as specified in 6.1 through 6.4. Each test dummy is restrained only in seating positions for which there is an automatic belt restraint. In addition, any folding armrest is retracted.

S6.1 Head. The transverse instrumentation platform of the head shall be horizontal within $\frac{1}{2}$ degree.

S6.2 Torso

S6.2.1 Driver's torso.

(a) In vehicles equipped with bench seats. The upper torso of the test dummy shall rest against the seat back. The midsagittal plane of the test dummy shall be vertical and parallel in the vehicle's longitudinal centerline, and pass through the center of the steering wheel rim at the surface of the hub.

(b) In vehicles equipped with bucket seats. The upper torso of the test dummy shall rest against the seat back. The midsagittal plane of the driver shall be vertical and shall coincide with the longitudinal centerline of the bucket seat.

S6.2.2 Passenger's torso. The upper torso of the test dummy shall rest against the seat back. The midsagittal plane of the test dummy shall be vertical and parallel to the vehicle's longitudinal centerline. Place the test dummy so that there is one inch between the outermost point of the skin of the upper torso and the innermost interior surface of the vehicle next to test dummy.

S6.3 Legs. The upper legs of the driver and passenger test dummies shall rest against the seat cushion to the extent permitted by placement of the feet. The initial distance between the outboard knee clevis flange surfaces shall be 14.5 inches. To the extent practicable, the left leg of the driver dummy and both legs of the passenger dummy shall be in vertical longitudinal planes. Final adjustment to accommodate placement of feet in accordance with S11.6 of Standard No. 208 (49 CFR 571.208) for various passenger compartment configurations is permitted.

S6.4 Feet.

S6.4.1 The right foot of the driver test dummy shall rest on the undepressed accelerator with the rearmost point of the heel on the floor surface in the plane of the pedal. If the foot cannot be placed on the accelerator pedal, it shall be positioned perpendicular to the tibia and placed as far forward as possible in the

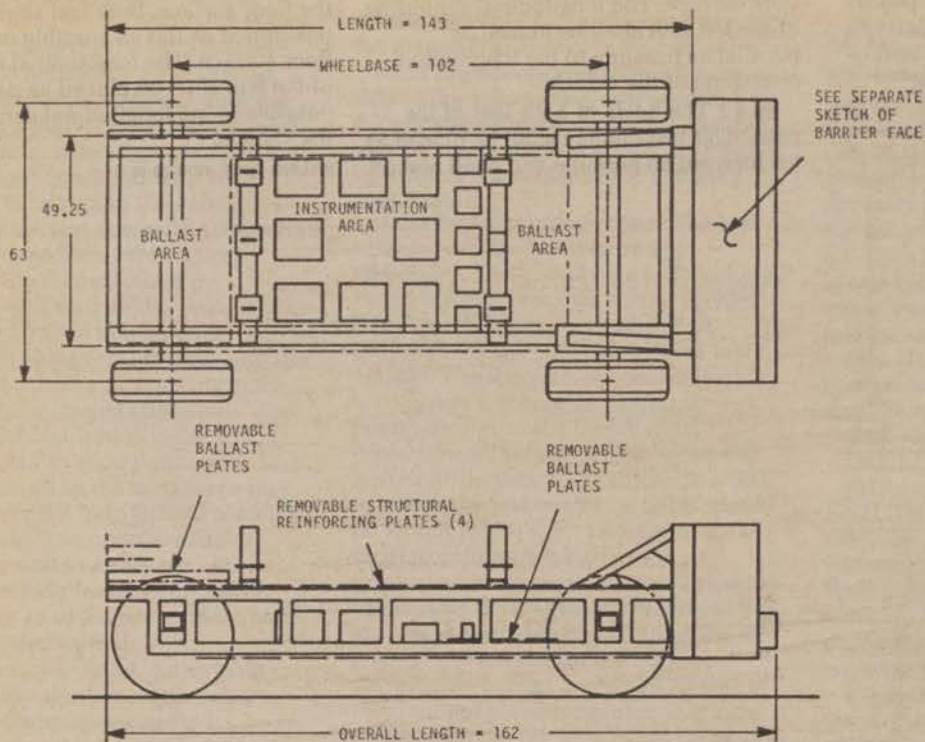
direction of the centerline of the pedal with the rearmost point of the heel resting on the floor surface. The heel of the left foot shall be placed as far forward as possible and shall rest on the floor surface. The left foot shall be positioned as flat as possible on the

floor surface. The longitudinal centerline of the left foot shall be placed as parallel as possible to the longitudinal centerline of the vehicle.

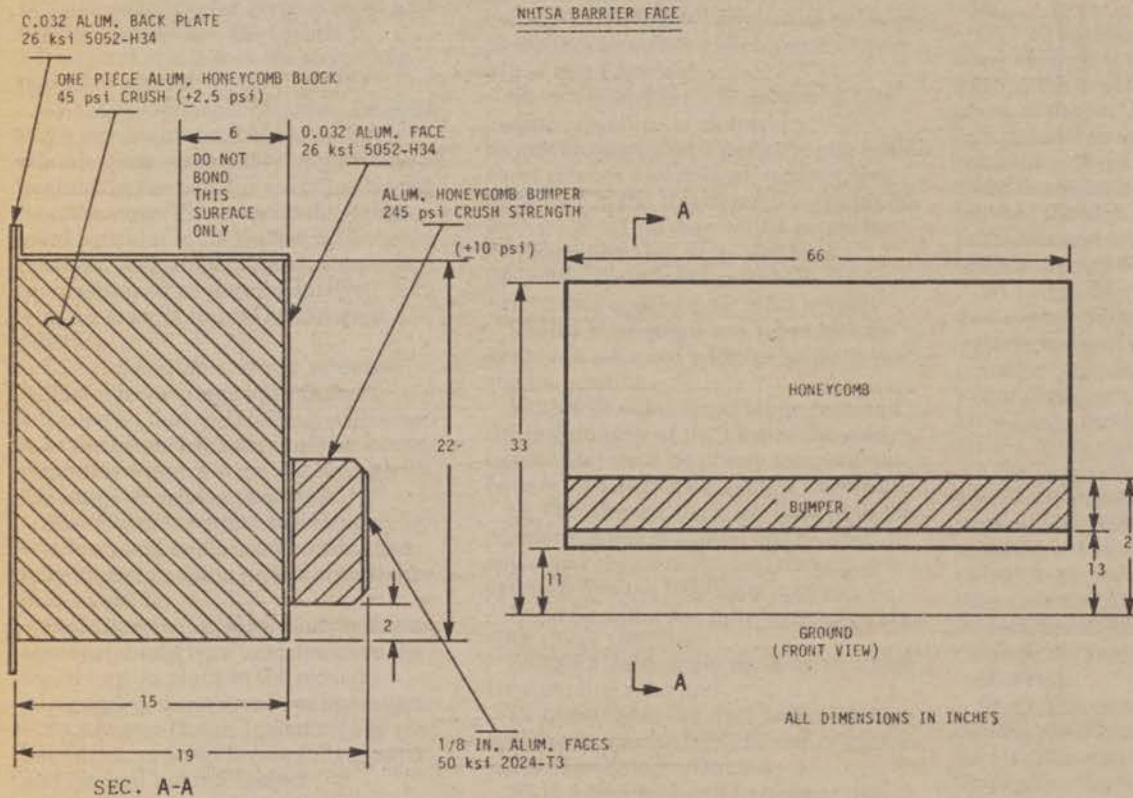
S6.4.2 The heels of both feet of the passenger test dummy shall be placed as far forward as possible and shall rest on

the floor surface. Both feet shall be positioned as flat as possible on the floor surface. The longitudinal centerline of the feet shall be placed as parallel as possible to the longitudinal centerline of the vehicle.

BILLING CODE 4910-59-M

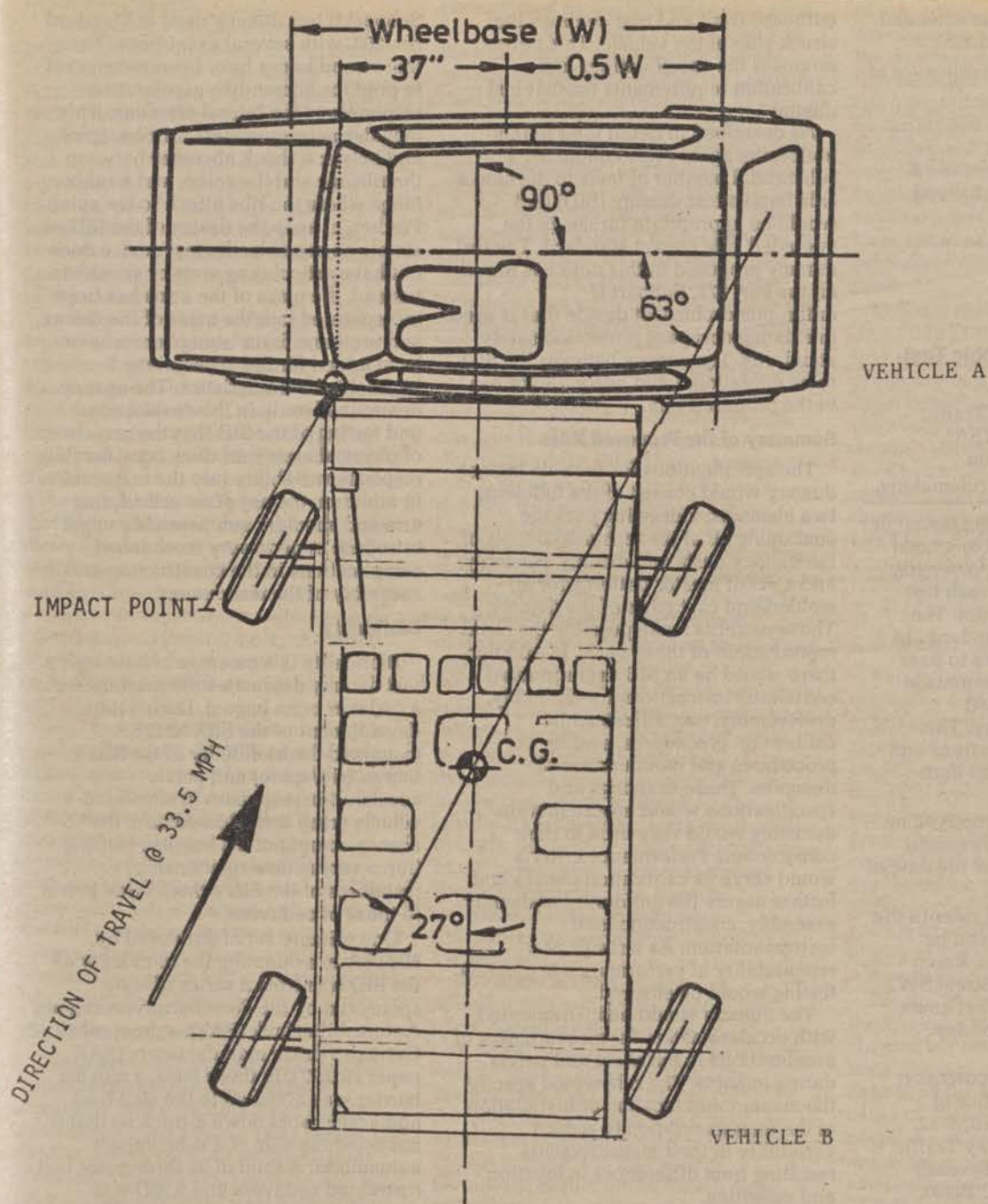


NHTSA VEHICLE CONFIGURATION - MOVING BARRIER SIDE IMPACTOR CONCEPT
(4-WHEELED VEHICLE SIMULATOR)



NHTSA side impactor - moving deformable barrier

Figure 1



TEST CONFIGURATION

Figure 2

3. Section 571.201 would be amended by removing S3.5 through S3.5.2.

(15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.)

Issued on January 21, 1988.

Barry Felrice,

Associate Administrator for Rulemaking,

[FR Doc. 88-1541 Filed 1-22-88; 2:10 pm]

BILLING CODE 4910-59-M

49 CFR Part 572

[Docket No. 88-07; Notice 1]

Side Impact Anthropomorphic Test Dummy

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice is being issued in conjunction with a proposal to amend Standard No. 214, *Side Door Strength*, by establishing a dynamic crash test requirement for passenger cars. The proposed amendment to Standard 214 would require passenger cars to pass several performance requirements in tests using a newly-developed anthropomorphic test dummy. This notice proposes the specifications and qualification requirements for that dummy.

DATES: Comments must be received on or before October 24, 1988. Proposed effective date is 30 days after the date of publication of the final rule.

ADDRESS: Comments should refer to the docket and notice numbers and be submitted to: Docket Section, Room 5109, NHTSA, 400 Seventh Street SW., Washington, DC 20590 [Docket hours are from 8 a.m. to 4 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Office of Vehicle Safety Standards, NRM-12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone (202 366-4916)

SUPPLEMENTARY INFORMATION:

Background

This proposal supplements a separate proposal being published elsewhere in this issue of the *Federal Register* that would amend Standard No. 214, *Side Door Strength*, to establish a new dynamic test requirement for passenger cars. The proposed amendment would require passenger cars to meet several performance requirements when struck in the side by a moving deformable barrier. In the test, an anthropomorphic test dummy would be placed in the

outboard front and rear seats on the struck side of the vehicle. This notice proposes the specifications and calibration requirements for that test dummy.

As described in detail later in this notice, the agency has conducted a substantial number of tests to develop a side impact test dummy (SID) that would be appropriate for use in the upgraded side impact standard. The test dummy proposed in this notice is based on the Part 572, Subpart B anthropomorphic test device that is used in existing occupant protection safety standards. The agency believes the SID to be operational and adequate for use in the proposed rule.

Summary of the Proposed Rule

The specifications for the side impact dummy would consist of the following two elements: a drawing package containing all of the technical details of the dummy parts and dummy assembly; and a set of master patterns for all molded and cast parts of the dummy. Those patterns make possible the rapid reproduction of those parts. In addition, there would be an SID user's manual containing instructions for assembly, disassembly, use, adjustments, calibration procedures, seating procedures and maintenance of dummies. These drawings and specifications would ensure that the dummies would vary little in their construction. Performance criteria would serve as calibration checks and further assure the uniformity of dummy assembly, construction, and instrumentation. As a result, the repeatability of performance in dynamic testing would be ensured.

The dummy would be instrumented with accelerometers for measurement of accelerations in the chest and pelvis during impacts. The rule would specify the manner and location of installation of the instrumentation to reduce variability in their measurements resulting from differences in location and mounting.

Drawings and specifications for the side impact test dummy are available for examination in the NHTSA Docket Section. Copies of those materials and an operation and maintenance manual can be obtained from the Rowley-Scher Reprographics, Inc., 1216 K Street NW., Washington, DC 20002, telephone (202) 628-6667. In addition, patterns for all cast and molded parts are available on a loan basis from the NHTSA Office of Vehicle Safety Standards.

Description

The proposed side impact dummy (SID) is identical to the existing Part 572,

Subpart B test dummy used in Standard No. 208, with several exceptions. The thorax and knees have been redesigned to produce human-like acceleration responses in the lateral direction. This includes accelerometers for ribs, spine and pelvis; a shock absorber between the ribcage and the spine; and a rubber hinge where the ribs attach to the spine. Further, to keep the design of the SID as simple as possible, the test device does not have articulating arms or shoulders. Instead, the mass of the arms has been incorporated into the mass of the thorax, and urethane foam 'stump' arms have been added for the appropriate biofidelity characteristics. The agency determined early in the development and testing of the SID that the presence of physical arms introduce considerable response variability into the test results. In addition, the use of an articulating arm and shoulder sub-assembly might introduce unnecessary mechanical complications in the construction and assembly of the test dummy.

Biofidelity

Biofidelity is a measure of how well a test dummy duplicates the responses of a cadaver in an impact. During the development of the SID, NHTSA examined the biofidelity of the SID's thorax (rib/spine) and pelvic acceleration responses in simulated vehicle crash tests. In addition, the agency compared the impulse loading (force versus time relationship) responses of the SID's thorax and pelvis to those of cadavers.

One primary set of data used by NHTSA in evaluating the biofidelity of the SID was from a series of tests sponsored by the Forschungsvereinigung Automobiltechnik (FAT), a group of German vehicle manufacturers (SAE paper 861877). In those tests, a moving barrier was attached to the sled buck and accelerated down a track so that it impacted the side of a subcompact automobile. A total of 35 three-point belt restrained cadavers and 5 SID test devices were used in this test series. Vehicles using cadaver test subjects were struck at speeds ranging from 40-60 kmh (25-37 mph), while tests using the SID were conducted at 50 kmh (31 mph).

In analyzing the results of those tests, the agency compared the cumulative variance of the test dummy responses to the cumulative variance of the cadaver responses. The results, which are discussed in more detail on pages IIIB-8-9 of the Preliminary Regulatory Impact Analysis, show that the responses of the upper and lower ribs, the lower spine and the pelvis of the SID correspond

well with the responses of the cadavers in similar impacts.

The agency also compared average peak acceleration values of cadavers and the SID in sled tests where the occupant impacted a padded or rigid wall. These results showed that, for the rigid wall impact condition, the SID thorax and pelvis values were significantly greater than those of a cadaver, which reflects the lower compliance compared to a cadaver. However, for the padded wall impact condition, the SID responses are closer to the cadaver's.

In the process of developing the side impact test procedure, NHTSA also compared the impulse-loading characteristics of the SID to cadavers in rigid and padded wall impact tests. In those tests, the agency found that for rigid wall impacts at 23 mph, the SID thorax and pelvis responded with higher force levels compared to cadavers, but that for padded wall impact conditions, the responses were very similar. The overresponse of the SID for the rigid wall occurs because the SID structure is a composite structure containing steel components, damping materials, and lead ballast and is, naturally, less compliant than the human skeletal structure.

Although the testing shows that, in a rigid wall impact, the SID experiences higher accelerations than a cadaver, it is important to note that such a test environment is not typical of the occupant-to-door interior impacts experienced in side crashes. In tests with a padded structure, which will be more typical of the interior of a vehicle, the SID responses are very close to those of cadavers. Based on all of the testing, the agency believes that the SID has adequate biofidelity.

Durability and Reliability

The agency has gained considerable experience regarding the SID's durability and reliability from 20 full scale production vehicle tests conducted for the agency by the Transportation Research Center (TRC) of Ohio and from 16 modified 1985 Ford LTD tests, also conducted by TRC of Ohio for the Motor Vehicle Manufacturers Association (MVMA) (Society of Automotive Engineers [SAE] paper 871115). These full scale vehicle tests were conducted with the SID unrestrained, at an impact angle of 90 degrees and a MDB speed of 33.5 mph. In NHTSA's tests, the relative velocity of the SID and the inner door surface at contact ranged from 20 mph to 27 mph, based on analysis of the door and SID accelerometer responses. These tests, in combination with rigid wall sled tests, cover what is considered to be the

range of impact environments to be encountered by the SID when it is used by vehicle manufacturers in upgrading the side impact performance of their automobiles. At one end of the scale, the rigid wall sled tests conducted at 23 mph are considered to be the most severe of impact environments as are some of the small, subcompact production vehicle tests. At the other end of the scale, the modified full size 1985 Ford LTD tests conducted by MVMA represent what is considered to be the least severe test condition (with respect to the thorax and pelvis) as were most of the rear seat 20 production vehicle tests conducted by TRC of Ohio.

While NHTSA's test program covering the first 19 production vehicles was underway, NHTSA identified several changes that would increase the durability of the SID. Those changes, which were incorporated into the dummy, included: (1) Replacing the leather rib hinge of the SID with a rubber transmission belt to eliminate a fatigue failure problem, (2) adding a universal joint to the end of the thorax shock absorber to prevent shock absorber piston rod bending as the chest rotated about the spine box, and (3) building plastic hinges into the femurs to stop the breakage of the aluminum knee castings caused by lower leg bending moment during side structure deformation. Since changing the rib hinges could potentially affect the acceleration measurements made with the SID, the agency studied the influence of the new rubber hinge material on thoracic response. The agency determined that although some differences occurred, they were insignificant.

The agency has also done considerable work to overcome two other durability problems that developed during the first 19 production vehicle tests. Those two problems involved the delamination of the damping material from the ribs of the SID thorax and the presence of approximately one-half inch of permanent deflection in the rib cage following a severe impact test, such as a 23 mph sled test. Delamination of the rib damping material could allow mechanically generated signals to interfere with rib acceleration signals and permanent deflection set within the rib cage could significantly alter the geometry of the SID so that errors could occur in the thorax responses. NHTSA has studied the influence of both of these failure modes on the production vehicle test results and found that the thorax responses were not significantly altered by either damping material delamination or the permanent set of the

ribs. However, to reduce the possibility of any adverse effects, the agency has developed a new method of attaching the damping material to the ribs to reduce delamination. Further, NHTSA has adopted the United-McGill damping material used in the Hybrid III dummy. In addition, NHTSA is proposing an overall pre-test chest configuration envelope requirement that must be met to ensure that the test dummy's ribs have not experienced excessive permanent deflection after repeated uses.

Overall, the agency expects the durability of the SID to equal or exceed that of the Hybrid III test dummy. One of the primary reasons for this expectation is that the SID is based on the existing Part 572 Subpart B test dummy, which is durable enough to be used in 70 full scale, unrestrained, 30 mph frontal crash tests. Because the thorax is the prime durability constraint, NHTSA anticipates that the number of unrestrained SID full scale side impact crash applications will exceed at least 30 tests without needing major repairs.

Reliability

Reliability is closely related to durability in that both affect the ability of the tester to achieve valid and repeatable test results. NHTSA considers reliability to be a measure of the ability of the dummy to achieve valid test results when the dummy is properly calibrated and in good working order. NHTSA considers the term durability, on the other hand, to mean the longer term ability of the dummy to remain in calibration, coupled with the ability of the individual dummy components to resist failure.

For the 20 production vehicle tests, there were a total of 160 primary channels of test data collected. In those tests, there were only 3 cases of lost data used for TTI(d) computations and 5 cases of data missing in pelvis acceleration readings. These test results indicated an overall SID data acquisition reliability of 93 percent for TTI(d) and a reliability of 88 percent with respect to pelvis acceleration. In reviewing the results of the NHTSA and MVMA full scale tests, the agency has tentatively concluded that SID is just as reliable as the Hybrid III dummy or the Part 572, Subpart B dummy.

Repeatability and Reproducibility

NHTSA has carefully studied the repeatability and reproducibility of the SID using two methods. The control of the variation of dummy responses for the same device (called repeatability) and among SID devices made by

different manufacturers (called reproducibility) has been a primary goal of the agency during development of the side impact test dummy.

The agency has used a number of methods to evaluate the repeatability and reproducibility of the SID. In work done for the agency by Calspan, the agency used a statistically-based approach called the Normalized Integrated Squared Error Method in which the amplitude, phase, and shape of the deviations of each individual acceleration-time response curve of the SID is compared to the mean value for all the curves (SAE Paper 831624). The second method used by the agency involved comparing the coefficient of variation for a sample of pendulum data and 23 mph sled test data (Safety Research Laboratory (SRL)—102).

In its study, Calspan established a 6 percent range of acceptable variance for repeatability and an 8 percent range of acceptability for reproducibility for the phase, amplitude, and shape of the response acceleration-time curves (SAE Paper 831624). Calspan evaluated a group of six SIDs in a series of 14 and 20 fps pendulum impacts. The results obtained in those tests are representative of the SID test devices used in the early development phases of the agency's side impact program. The results showed that the repeatability and reproducibility of the test dummies were well within the two ranges of variability.

NHTSA's Vehicle Research and Test Center conducted a series of 14 fps pendulum impacts and 23 mph sled tests with some of the SID dummies being used in the 19 full scale production vehicle test program. The coefficients of variance for the 14 fps pendulum qualification tests conducted on two of the test dummies ranged from 4.8 percent to 6.9 percent for one test dummy and 3.8 percent to 4.1 percent for the other, well within the range of acceptability.

The agency also examined the repeatability and reproducibility of the test dummies in 23 mph sled tests. Those tests showed that, for the thorax, spine, and pelvis responses, the repeatability is very high, with coefficient of variation values of 2.9 percent maximum for the ribs, 7.7 percent for the lower spine and 1.7 percent for the pelvis. With respect to reproducibility, the coefficients of variance values for the same three responses among the three SIDs tested were maximums of 2.4, 6.2 and 2.5 percent, respectively. By comparison, the Hybrid III repeatability coefficient of variation values ranged from 2.7 percent to 6.2 percent while reproducibility coefficient of variation values varied

from 3.4 percent to 5.2 percent. In summary, the SID appears to be very close to the Hybrid III with respect to repeatability and reproducibility.

The agency has also reviewed test data collected by MVMA in its side impact test series using 16 1985 Ford LTD's. MVMA conducted these tests to determine the influence of structural and padding modifications on dummy response variability and to determine the repeatability of a full vehicle systems test. NHTSA conducted an analysis of the variance of the MVMA's rib/spine/pelvis response data and determined that the coefficient of variance values for the most part were well within the 6-8 percent range, with the upper boundary being exceeded in only two cases.

Temperature Sensitivity

The agency developed the side impact test procedure, and the application of the SID dummy, around a 66°F to 78°F interior occupant temperature range, the same as required for the Part 572 Subpart B dummy used in Standard No. 208 tests. The similarity in construction of the chests of the SID, Part 572, Subpart B, and Hybrid III have made the agency particularly aware of response variations due to changes in temperature and of the importance of a practicable test temperature range for side impact compliance tests.

The test procedure specifies that the SID be placed in a controlled temperature environment for at least four hours within a 66-78°F temperature range prior to each crash test. In addition, the SID is to be maintained within this temperature range during the crash test. NHTSA has found in its crash testing of production vehicles that it is possible to maintain the temperature of the test dummy within the required range prior to the test by using a portable air conditioning unit. In cases of extremely low or high temperatures, the agency has found that the use of a portable garage can provide a controlled ambient temperature of approximately 72°F.

Symmetry

ATD symmetry is concerned with the variability of percentage change of measured response of off-angle positions from the designed impact direction. This accounts for the real world where impacts may not occur precisely at 90 degrees. The agency has closely examined the films for its side impact tests to determine the angle at which the dummy strikes the interior of the vehicle at the moment of impact. Although the moving barrier hits the test vehicle at 90 degrees, it is extremely

difficult to identify the contact angle of the inner door and the test dummy. Close examination of side impact crash films, however, show that the kinematics of the test dummy are such that an angle of 90 degrees appears to be the prevalent angle of impact between the inner door and the SID.

The agency has however examined the symmetry of the SID thorax to identify how the responses at 80 degrees differ from those at 90 degrees. 80 degrees represents an off-angle of 10 degrees from the ideal lateral direction. NHTSA found that for the three prime thorax responses used to calculate the TTI(d), the rib responses increased by 8.8 percent maximum while the lower spine response decreased by 5.8 percent. The TTI(d) calculation for that off-angle impact increased by 4.0 percent from 97.9 to 101.8. Thus, the agency believes that the symmetry of the side impact dummy is more than sufficient to perform adequately in 90 degree impacts and also when it is struck in reasonably expectable variations from the 90 degree impact.

Reversibility

NHTSA also has examined whether the performance of the side impact dummy is affected depending on which side of the dummy is struck. The side impact test dummy's thorax is designed so that the test dummy can be used in either left hand (driver side) or right hand (passenger) side crash tests. All of the MVMA tests were satisfactorily conducted with the test dummy seated on the right hand side of the car and thus the right hand side of the test dummy received the primary impact. In all of NHTSA's production vehicle side impact tests, the side impact dummy was placed on the driver's side and thus the left hand side of the dummy received the primary impact. As discussed earlier in this notice, the repeatability and reproducibility data from those two test series show that the test dummy performed adequately regardless of which side of the test dummy was impacted.

Qualification Tests

Before a test dummy can be used in a vehicle crash test, it must be examined to determine whether it conforms to all of the specifications set out in the blueprints for the dummy. In addition, the dummy must be carefully examined to make sure that it has been correctly assembled. Finally, the test dummy must pass a series of qualification tests. The purpose of a qualification test is to measure the performance of the test dummy in a well-controlled laboratory

impact test to determine whether the test dummy's responses are within specifications and thus the test dummy will provide objective results.

The agency is proposing two qualification tests for the side impact test dummy. The first is a 14 fps pendulum impact to the center of side of the thorax. The purpose of that test is to measure the response of the upper and lower rib and the lower spine. The proposed qualification limits in those tests are that the upper rib must experience an acceleration that is not less than 37 g's and not more than 46 g's, the lower rib must experience between 37 and 46 g's and the lower spine 15 to 22 g's. The other test involves a 14 fps pendulum impact to the pelvis to measure the pelvic responses. The proposed limits are that the acceleration measured in the pelvis shall be not less than 40 g's and not more than 60 g's. In addition, the acceleration-time curve must be unimodal and lie at or above the + 20 g level for not less than 3 milliseconds and not more than 7 milliseconds.

With one exception, both tests utilize readily available compliance test equipment, instrumentation and procedures that are already used in qualification testing of other test dummies. The one exception is the use of a Finite Impulse Response (FIR) filter to process the acceleration data measured in the test. The agency is proposing the use of the FIR filtering methodology to process acceleration signals, rather than the standard SAE practice, since the FIR filtering technique was used with the cadaver impact data and with the sled and vehicle test data. Some additional steps are needed in handling the thorax response data. A special Fortran software package developed by the agency is required to process the data (See Docket No. 79-04-NO2-018). Based on its experience, NHTSA does not anticipate that crash data processing would be significantly affected by requiring the use of the FIR filter by the manufacturers and compliance test laboratories.

The two qualification tests proposed for the SID require less labor and are less expensive compared to the tests used with the Part 572 Subpart B and the Hybrid III in a Standard No. 208 compliance test. The Part 572, Subpart B test dummy must pass 10 qualification tests and the Hybrid III must pass 9 tests. Although the SID has significantly fewer qualification requirements, hence lower labor costs per test, some of that benefit may be offset, for example, in replacing ribs or sections of ribs if the

qualification corridors are not met. The SID chest appears to be more complicated than the Hybrid III thorax and could be more labor intensive if repairs are needed.

Alternative Test Dummy

Another side impact dummy called EUROSID has been considered by the agency. This dummy was developed by a group of European research organizations under the auspices of the European Experimental Vehicles Committee (EEVC). It has undergone extensive testing and evaluation in the process of its development. This evaluation involved component parts (neck, thorax, abdomen, and pelvis) validation tests; sensitivity, repeatability, reproducibility, and certification tests; as well as full scale crash tests. The major results of these tests are summarized in the document "The European Side Impact Dummy-EUROSID," proceedings of the seminar held in Brussels on December 11, 1986 (Docket 79-04-GR-080).

The agency has recently conducted a limited number of evaluation sled tests with a prototype version of EUROSID. The results of these tests are contained in the agency report "Evaluation of The Prototype EUROSID and Comparison With The U.S. SID," Project Number VRIC-87-0037, available from Docket 79-04. The EUROSID was designed to measure thoracic injury on the basis of chest deflection (rib-to-spine), but in the agency evaluation tests of the prototype, the ribs "bottomed" in all tests, indicating that the chest deflection measurement was not able to distinguish differences in impact intensities such as between rigid and padded surfaces. However, the EUROSID thorax peak acceleration responses compared reasonably well with the SID's for the same impact conditions when its arm was positioned next to the ribs. Although the safety performance criteria for the EUROSID have not yet been specifically defined, it has been suggested in the above document that a tentative limit on the rib deflection be 25-35 mm in order to avoid chest injuries of severity greater than AIS3.

More recently, the EUROSID has been upgraded and two "production" versions have been acquired by the agency for further sled test evaluation with subsequent full scale car crash testing. These are needed for the agency to ascertain the feasibility of use of EUROSID for side impact protection rulemaking. The production version has flexible arms, which represent a significant change from the rigid arm design. The type of arm used and its

position (recommended to be placed in the "hands on steering wheel" position) can be critical considering the impact response variabilities that result with arm positioning, and the different arm positions that exist between the driver and passenger. The production version has also been modified with ballast weight added to compensate for the weight difference between flexible and rigid arms. The agency does not have data regarding the relationship between the EUROSID production version and the data previously reported in the December 1986 seminar held in Brussels.

The Motor Vehicle Manufacturers Association (MVMA) has sponsored a program in which the EUROSID is to be evaluated in car crash tests. It is expected that the MVMA will make the results available at a later date.

While the agency does not possess sufficient data on the EUROSID to propose its use as a side impact test device at this time, it is nevertheless optimistic that EUROSID can be used in such a crash mode. The agency encourages manufacturers and governmental agencies to supply it with additional data on the EUROSID's capabilities. If at some later date, the EUROSID is found to equal or exceed the U.S. SID in its capability for measuring vehicle occupant side impact responses, the agency will consider adopting the EUROSID in its side impact rulemaking. It should be noted that the agency is committed to international harmonization where practical, and believes that adoption of the EUROSID, when feasible, would promote this goal. The agency is not committed to the SID dummy and remains open to the use of other test devices which can measure improved side impact protection.

For additional discussion on the EUROSID, see the Preliminary Regulatory Impact Analysis (pages IIB-80 to 87).

Impact Analyses

As indicated at the beginning of this preamble, this proposal supplements a separate proposal being published elsewhere in this issue of the *Federal Register* that would amend Standard No. 214 to establish a new dynamic test requirement for passenger cars. This proposal for the specifications and qualification requirements for the new side impact test dummy is part of that rulemaking. As such, it is major within the meaning of Executive Order 12291, and significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has prepared a single Preliminary Regulatory Impact Analysis

(PRIA) which describes the economic and other effects of both proposals. The analysis is available in the docket for the dynamic test requirement proposal.

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis. Few, if any, passenger car manufacturers would qualify as small entities. Small organizations and governmental units should not be significantly affected since the potential increases associated with this proposed action should only slightly affect the purchase price of new motor vehicles.

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

As indicated in the separate proposal, the reporting and recordkeeping requirements proposed in that notice (associated with the proposed phase-in) are considered to be information collection requirements as that term is defined by the Office of Management and Budget in 5 CFR Part 1320. However, this notice does not propose any information collection requirements that must be submitted to the Office of Management and Budget pursuant to the requirements of the Paperwork Reduction Act.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting

forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 572

Motor vehicle safety.

In consideration of the foregoing it is proposed to amend 49 CFR Part 572, Anthropomorphic Test Dummies, as follows:

PART 572—[AMENDED]

1. The authority citation for Part 572 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, and 1407; delegation of authority at 49 CFR 1.50.

2. A new Subpart F, consisting of sections 572.40 through 572.44, would be added to read as follows:

Subpart F—Side Impact Dummy 50th Percentile Male

Sec.

- 572.40 Incorporated materials.
- 572.41 General description.
- 572.42 Thorax.
- 572.43 Lumbar spine and pelvis.
- 572.44 Test conditions and instrumentation.

Subpart F—Side Impact Dummy 50th Percentile Male

§ 572.40 Incorporated materials.

(a) The drawings and specifications referred to in this regulation that are not set forth in full are hereby incorporated in this part by reference. These materials are hereby made part of this regulation. The Director of the Federal Register has approved the materials incorporated by reference. For materials

subject to change, only the specific version approved by the Director of the Federal Register and specified in the regulation are incorporated. A notice of any change will be published in the **Federal Register**. As a convenience to the reader, the materials incorporated by reference are listed in the Finding Aid Table found at the end of this volume of the Code of Federal Regulations.

(b) The drawings, specifications, and assembly manual incorporated in this part by reference are available for examination in the general reference section of Docket 79-04, Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington DC. Copies may be obtained from Rowley-Scher Reprographics, Inc., 1216 K Street NW., Washington, DC 20002, telephone (202) 628-6667.

§ 572.41 General description.

(a) The dummy consists of component parts and component assemblies which are described in approximately 250 drawings and specifications that are set forth in § 572.5(a) of this chapter with the following changes and additions which are described in approximately 80 drawings and specifications:

(1) The head assembly consists of the assembly specified in § 572.6(a) and conforms to each of the drawings subtended under drawing SA 150 M 010 and drawings specified in SA SID M 010 of this subpart.

(2) The neck assembly consists of the assembly specified in § 572.7(a) and conforms to each of the drawings subtended under drawing SA 150 M 020.

(3) The thorax assembly consists of the assembly shown as number SID-053 and conforms to each applicable drawing subtended by number SA SID M 030.

(4) The lumbar spine consists of the assembly specified in § 572.9(a) and conforms to drawing SA 150 M 050 and drawings subtended by SA SID M 050 specified by this part.

(5) The abdomen and pelvis consist of the assembly specified in Subpart b (§ 572.9) and conform to the drawings subtended by SA 150 M 060 and drawings subtended by SA SID M 060 specified by this subpart.

(6) The lower limb assemblies consist of the assemblies shown as numbers SA 150 M 080 and SA 150 M 081 in Figure 1 and SA SID M 080 and SA SID M 081 and conform to the drawings subtended by those numbers.

(b) The structural properties of the dummy are such that the dummy conforms to the requirements of this

subpart in every respect both before and after being used in vehicle tests specified in Standards No. 214 § 571.214 of this chapter).

§ 572.42 Thorax.

(a) When the thorax of a completely assembled dummy is impacted by a test probe conforming to § 572.44(a) at 14 fps. in accordance with paragraph (b) of this section, the peak accelerations at the location of the accelerometers mounted on the thorax in accordance with § 572.44(b) shall be:

(1) for the accelerometer at the top of the Rib Bar (LUR) not less than 37g and not more than 46g.

(2) for the accelerometer at the bottom of the Rib Bar (LLR) not less than 37g and not more than 46g.

(3) for the lower thoracic spine not less than 15g and not more than 22g.

(b) *Test procedure* (1) With the dummy seated and positioned on a seating surface as specified in § 572.44(h), adjust the dummy legs at any setting between 1g and 2g, which just supports the limbs' weight when the limbs are extended horizontally forward.

(2) Place the longitudinal centerline of the test probe at the chest side at the intersection of the centerlines of the third rib and the Rib Bar. The probe's centerline is perpendicular to thorax's midsagittal plane.

(3) Align the test probe so that its longitudinal centerline coincides with the line formed by the intersection of the transverse and frontal planes perpendicular to the chest's midsagittal plane passing through the designated impact point.

(4) Position the dummy so that the thorax's midsagittal plane and tangential plane to the Hinge Mounting Block (Drawing SID-034) are vertical.

(5) Impact the thorax with the test probe so that at the moment of impact at the designated impact point, the probe's longitudinal centerline falls within 2 degrees of a horizontal line perpendicular to the dummy's midsagittal plane and passing through the designed impact point.

(6) Guide the probe during impact so that it moves with no significant lateral, vertical or rotational movement.

(7) Allow a time period of at least 20 minutes between successive tests of the chest.

§ 572.43 Lumbar spine and pelvis.

(a) When the pelvis of a fully assembled dummy is impacted laterally by a test probe conforming to § 572.44(a) at 14 fps. in accordance with paragraph (b) of this section, the peak acceleration at the location of the accelerometer

mounted in the pelvis cavity in accordance with § 572.44(c) shall be not less than 40g and not more than 60g. The acceleration-time curve for the test shall be unimodal and shall lie at or above the +20g level for an interval not less than 3 milliseconds and not more than 7 milliseconds.

(b) *Test procedure.* (1) With the dummy seated and positioned on a surface as specified in § 572.44(h), adjust the dummy's leg joints at any setting between 1g and 2g, which just supports the limbs' weight when the limbs are extended horizontally forward.

(2) Place the longitudinal centerline of the test probe at the pelvis side at a point 3.9 inches vertical from the seating surface and 4.8 inches ventral to the transverse vertical plane perpendicular to the dummy's midsagittal plane and tangential to the dummy's buttocks.

(3) Align the test probe so that at impact its longitudinal centerline coincides with the line formed by intersection of the horizontal and vertical planes perpendicular to the midsagittal plane passing through the designated impact point.

(4) Adjust the dummy so that its midsagittal plane is vertical and the rear surfaces of the thorax and buttocks are tangent to a transverse vertical plane.

(5) Impact the pelvis with the test probe so that at the moment of impact the probe's longitudinal centerline falls within 2 degrees of the line specified in (3) above.

(6) Guide the test probe impact so that it moves with no significant lateral, vertical or rotational movement.

(7) Allow a time period of at least 2 hours between successive tests of the pelvis.

§ 572.44 Test conditions and instrumentation.

(a) The test probe used for lateral thoracic and pelvis impact tests is a 6 inch diameter cylinder that weighs 51.5 pounds including instrumentation. Its impacting end has a flat right angle face that is rigid and has an edge radius of 0.5 inches.

(b) Three accelerometers are mounted in the thorax for measurement of lateral accelerations with each accelerometer's sensitive axis aligned to be closely perpendicular to the thorax's midsagittal plane. The accelerometers are mounted in the following locations:

(1) One accelerometer is mounted on the Thorax to Lumbar Adaptor (SID-005) by means of a T12 Accelerometer Mounting Platform (SID-009) and T12 Accelerometer Mount (SID-038) with its seismic mass center at any distance up to .4 inches from a surface point on the Thorax or Lumbar Adaptor where two

perpendicular planes aligned with the adaptor's vertical and horizontal center lines intersect.

(2) Two accelerometers are mounted, one on the top and the other at the bottom part of the Rib Bar (SID-024). Their seismic mass centers are at any distance up to .4 inches from a point on the Rib Bar surface located on its longitudinal center line .75 inches from the top for the top accelerometer and .75 inches from the bottom, for the bottom accelerometer.

(c) One accelerometer is mounted in the pelvis for measurement of the lateral acceleration with its sensitive axis perpendicular to the pelvic midsagittal plane. The accelerometer is mounted on the inside surface of the Pelvic Instrument Cover Plate (Drawing ATD-3047), with its seismic mass center located up to .25 inches from the point of intersection of the cover plate center lines and .25 inches forward of the inside cover plate surface.

(d) Instrumentation and sensors used must conform to the SAE J-211 (1980) requirements. The outputs of the accelerometers installed in the dummy, and of test apparatus specified by this part, are processed in the following manner:

(1) Filter the data with a 300 Hz, SAE Class 180 filter;

(2) Subsample the data to a 1600 Hz sampling rate; and

(3) Filter the data with a Finite Impulse Response (FIR) filter having the following characteristics—

(i) Passband frequency, 100 Hz.

(ii) Stopband frequency, 189 Hz.

(iii) Stopband gain, -50 db.

(iv) Passband ripple, 0.0225 db.

(4) The digital computer program for the FIR filter is contained in Docket 79-04, Notice 02-018.

(e) The mountings for the spine and pelvis accelerometers shall have no resonance frequency within a range of 3 times the frequency range of the applicable channel class.

(f) Limb joints of the test dummy are set at the force between 1-2g, which just supports the limbs' weight when the limbs are extended horizontally forward. The force required to move a limb segment does not exceed 2g throughout the range of limb motion.

(g) Performance tests are conducted at any temperature from 66° F to 78° F and at any relative humidity from 10 percent to 70 percent after exposure of the dummy to these conditions for a period of not less than 4 hours.

(h) For the performance of tests specified in §§ 572.42 and 572.43, the dummy is positioned as follows:

(1) The dummy is placed on a flat, rigid, clean, dry, horizontal surface of teflon sheeting with a smoothness of 10 micro inches and whose length and width dimensions are not less than 16 inches, so that the dummy's midsagittal plane is vertical and centered on the test surface. The dummy's head is positioned so that the head's horizontal bulkhead on which accelerometer are installed is horizontal. The seating surface is

without the back support and the test dummy is positioned so that the dummy's midsagittal plane is vertical and centered on the seat surface and that the rear surface of the Hinge Mounting Block is vertical.

(2) The legs are positioned so that their centerlines are in planes parallel to the midsagittal plane.

(3) Performance tests of the assembled dummy are separated in time by a

period of not less than 20 minutes unless otherwise specified.

(4) Surfaces of the dummy components are not painted except as specified in this part or in drawings subtended by this part.

Issued on January 21, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-1542 Filed 1-22-88; 2:11 pm]

BILLING CODE 4910-59-M

Notices

Federal Register

Vol. 53, No. 17

Wednesday, January 27, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Arboretum Advisory Council; Intent To Reestablish an Advisory Council

Notice is hereby given that the Secretary of Agriculture intends to reestablish the National Arboretum Advisory Council. The purpose of the Council will be to provide the Secretary of Agriculture with an independent overview of the work of the Arboretum by a body of qualified individuals who represent national organizations and other sectors of U.S. agriculture. The National Arboretum was created by Act of Congress (Pub. L. 799, 69th Congress, 20 U.S.C. 191-194) on March 4, 1927, for purposes of research and education concerning tree and plant life.

The Council will meet annually at the National Arboretum in Washington, DC, to receive reports from the Arboretum staff on research progress with trees and environmental plants, educational activities, program development, and long-range goals. The Council's findings will be reported in writing to the Secretary of Agriculture.

It has been determined that the reestablishment of this Council would be in the public interest in connection with the work of the U.S. Department of Agriculture.

Interested parties are invited to submit written comments, views, or data concerning this proposal to Dr. Howard J. Brooks, National Program Staff, Agricultural Research Service, USDA, Room 234, Building 005, BARC-West, Beltsville, Maryland 20705, within fifteen (15) days of publication.

Done at Washington, DC, this 22nd day of January 1988.

John J. Franke, Jr.,

Assistant Secretary of Agriculture.

[FR Doc. 88-1607 Filed 1-26-88; 8:45 am]

BILLING CODE 3410-96-M

Federal Crop Insurance Corporation

Board of Directors; Meeting

Notice is hereby given that a meeting of the Board of Directors of the Federal Crop Insurance Corporation (FCIC) has been scheduled, as follows:

Date: January 29, 1988.

Place: Room 0204, South Building, U.S. Department of Agriculture, Washington, DC.

Time: 9:00 a.m.

Dated: January 15, 1988.

Edward D. Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-1556 Filed 1-26-88; 8:45 am]

BILLING CODE 3410-08-M

COMMISSION ON CIVIL RIGHTS

Nebraska Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 2:00 p.m., on February 26, 1988, at the University of Nebraska, College of Law, Lincoln, Nebraska. The purpose of the meeting is to discuss topics for future community forums to be held in Nebraska during fiscal year 1988.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Richard F. Duncan, or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 14, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-1572 Filed 1-26-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 3-83]

Foreign-Trade Zone 134—Chattanooga, TN; Application for Subzone Komatsu Construction/Industrial Equipment Plant

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Partners for Economic Progress, Inc., grantee of FTZ 134, requesting special-purpose subzone status for the construction equipment and industrial machinery manufacturing plant of Komatsu America Manufacturing Corporation (a subsidiary of Komatsu, Ltd., Japan), located in Chattanooga, Tennessee. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 18, 1988.

The Komatsu plant (47 acres) is located at Signal Mountain Road and Runyon Drive in Chattanooga. The facility employs 125 persons and is used to produce heavy duty construction equipment and industrial machinery such as excavators, motor graders, motor scrapers, crawler tractors, off-road dump trucks, wheel loaders, industrial robots, presses, and laser machining devices. At the outset, about half of the value of components will be sourced abroad, such as engines, transmissions, axles, hydraulic components, brakes, steering cases, torque connectors, valves, tanks, and track and revalve frames.

Zone procedures would exempt Komatsu from duty payments on the foreign components used in its exports. On its domestic sales, the company will be able to elect the duty rate that applies to finished equipment. The duty rate on the major components averages 4.2 percent, whereas the rates for the finished equipment range from 2.0 to 4.0 percent. The application indicates that zone procedures will help improve the Chattanooga plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli

(Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joel Mish, District Engineer, U.S. Customs Service, South Central Region, 423 Canal Street, New Orleans, Louisiana 70130; and Colonel Edward A. Starbird, District Engineer, U.S. Army Engineer District Nashville, P.O. Box 1070, Nashville, Tennessee 37202.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before March 11, 1988.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 900 Georgia Avenue, Room 209, Chattanooga, Tennessee 37401
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington DC 20230.

Dated: January 21, 1988.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 88-1647 Filed 1-26-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: January 27, 1988.

FOR FURTHER INFORMATION CONTACT: William L. Matthews or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the Federal Register (50 FR

32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a(a)(1), (a)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than January 31, 1989.

Antidumping duty proceedings and firms	Periods to be reviewed
Elemental Sulphur From Canada:	
BP	12/01/86-11/30/87
Burza Resources	12/01/86-11/30/87
Cities Service	12/01/86-11/30/87
Cornwall Chemicals	12/01/86-11/30/87
Home Oil	12/01/86-11/30/87
Imperial Oil	12/01/86-11/30/87
InterRedec	12/01/86-11/30/87
Koch Sulphur	12/01/86-11/30/87
Mobil Oil Canada	12/01/86-11/30/87
Petro-Canada	12/01/86-11/30/87
Petrogas	12/01/86-11/30/87
Suncor	12/01/86-11/30/87
Texaco Canada	12/01/86-11/30/87
Timshell	12/01/86-11/30/87
Photo Albums and Photo Album Filler Pages from Hong Kong:	
Bernlaxie	12/01/86-11/30/87
Climax Paper Converters	12/01/86-11/30/87
Far East Metal & Plastic	12/01/86-11/30/87
General Trading	12/01/86-11/30/87
Graphics International	12/01/86-11/30/87
Great China Industrial	12/01/86-11/30/87
Hang Fat	12/01/86-11/30/87
Hip Sing Leather Products	12/01/86-11/30/87
Hoi Kun	12/01/86-11/30/87
Lee Tung	12/01/86-11/30/87
Northvale	12/01/86-11/30/87
Pavri Bros	12/01/86-11/30/87
Perfect Industrial	12/01/86-11/30/87
Sincere	12/01/86-11/30/87
Tai Shun Plastic	12/01/86-11/30/87
Union Paper Box	12/01/86-11/30/87
Unique Stationery	12/01/86-11/30/87
Wah Luen	12/01/86-11/30/87
Wing Shing	12/01/86-11/30/87
Wiseman Plastic Products	12/01/86-11/30/87
Zamford Enterprises	12/01/86-11/30/87
Cellular Mobile Telephones and Subassemblies from Japan:	
Mitsubishi Electric	12/01/86-11/30/87
Nihon Dengyo	12/01/86-11/30/87
Steel Wire Strand for Prestressed Concrete from Japan:	
Kokoku Steel Wire	12/01/86-11/30/87
Mitsubishi Corp.	12/01/86-11/30/87
Nissho Iwai	12/01/86-11/30/87
Shinko Wire	12/01/86-11/30/87
Suzuki Metal	12/01/86-11/30/87
Taikoko Sangyo	12/01/86-11/30/87
Tokyo Rope	12/01/86-11/30/87

Antidumping duty proceedings and firms	Periods to be reviewed
Tuners (of the type used in consumer electronic products) from Japan:	
Toa Electric	12/01/86-11/30/87
Porcelain-on-Steel Cooking Ware from Mexico:	
CINSA	05/20/86-11/30/87
Troques y Esmaltes	05/20/86-11/30/87
Low-Fuming Brazing Copper Wire & Rod from New Zealand:	
McKechie	12/01/86-11/30/87
Porcelain-on-Steel Cooking Ware from the People's Republic of China:	
China National Light Industrial Products	05/20/86-11/30/87
Photo Albums and Photo Album Filler Pages from the Republic of Korea:	
Ace Trading	12/01/86-11/30/87
Ahjun	12/01/86-11/30/87
Atico Korea	12/01/86-11/30/87
Bowon	12/01/86-11/30/87
Chinsung	12/01/86-11/30/87
Chungwoo	12/01/86-11/30/87
Cobra	12/01/86-11/30/87
Co-Prosperity	12/01/86-11/30/87
Costco Wholesale	12/01/86-11/30/87
Daechun Silup	12/01/86-11/30/87
Daelim	12/01/86-11/30/87
Daewoo	12/01/86-11/30/87
Dae Young	12/01/86-11/30/87
Deho Industries	12/01/86-11/30/87
Donam	12/01/86-11/30/87
Dong Bang	12/01/86-11/30/87
Dong In	12/01/86-11/30/87
Dong Won	12/01/86-11/30/87
Dongwoo	12/01/86-11/30/87
Eun Jaeng Trading	12/01/86-11/30/87
Eunjin	12/01/86-11/30/87
Eun Sung	12/01/86-11/30/87
G.I. Corp.	12/01/86-11/30/87
Gyeongjin	12/01/86-11/30/87
Hae Gang Marine Food	12/01/86-11/30/87
Hando	12/01/86-11/30/87
Han Duk Mul San	12/01/86-11/30/87
Hankook Trading	12/01/86-11/30/87
Hansang	12/01/86-11/30/87
Han Yung	12/01/86-11/30/87
Honey Stationery	12/01/86-11/30/87
Hyosung	12/01/86-11/30/87
Hyundai	12/01/86-11/30/87
Hypodong Chemical	12/01/86-11/30/87
J & C International	12/01/86-11/30/87
Jin Yang	12/01/86-11/30/87
Jung Ang Export	12/01/86-11/30/87
KMB	12/01/86-11/30/87
Kang Gyung	12/01/86-11/30/87
Kenny Trading	12/01/86-11/30/87
Keum Nam Trading	12/01/86-11/30/87
Keysung	12/01/86-11/30/87
Korea Binder Metal	12/01/86-11/30/87
Korea Enterprise	12/01/86-11/30/87
Korea Export & Import	12/01/86-11/30/87
Korea Merchandise Export	12/01/86-11/30/87
Korea Trading	12/01/86-11/30/87
Korea Trading Int'l	12/01/86-11/30/87
Kul	12/01/86-11/30/87
Kukje-ICC	12/01/86-11/30/87
Kuksan	12/01/86-11/30/87
Lee Tung	12/01/86-11/30/87
Little Prince Gift	12/01/86-11/30/87
Lotte Shopping	12/01/86-11/30/87
Lotte Trading	12/01/86-11/30/87
Metro Industrial	12/01/86-11/30/87
Mi-Ji	12/01/86-11/30/87
Mi Sung	12/01/86-11/30/87
The More Stationery	12/01/86-11/30/87
Nam Doo Trading	12/01/86-11/30/87
Nam Du Sang	12/01/86-11/30/87

Antidumping duty proceedings and firms	Periods to be reviewed
New Frontier.....	12/01/86-11/30/87
Raf Korea.....	12/01/86-11/30/87
Royal Trading.....	12/01/86-11/30/87
Sam Bang Trading.....	12/01/86-11/30/87
Sammi.....	12/01/86-11/30/87
Sam Sung.....	12/01/86-11/30/87
Sam Wang.....	12/01/86-11/30/87
Sam Young.....	12/01/86-11/30/87
Sang Ah.....	12/01/86-11/30/87
Sang Kyung Mulsan.....	12/01/86-11/30/87
Scandecor.....	12/01/86-11/30/87
Seokyoung.....	12/01/86-11/30/87
Seoul Agabang.....	12/01/86-11/30/87
Seoul Enterprise.....	12/01/86-11/30/87
Seoul General Stationery.....	12/01/86-11/30/87
Shin La.....	12/01/86-11/30/87
Shin Song.....	12/01/86-11/30/87
Shin Won.....	12/01/86-11/30/87
Sinhan Trading.....	12/01/86-11/30/87
Sooter Studios.....	12/01/86-11/30/87
Ssangyong.....	12/01/86-11/30/87
Sung Ill.....	12/01/86-11/30/87
Sung Jin.....	12/01/86-11/30/87
Sung Pung.....	12/01/86-11/30/87
Sungshim.....	12/01/86-11/30/87
Sunkyoung.....	12/01/86-11/30/87
Three Leaf.....	12/01/86-11/30/87
Tradepower.....	12/01/86-11/30/87
Universal.....	12/01/86-11/30/87
Woomi.....	12/01/86-11/30/87
Yangjisa.....	12/01/86-11/30/87
Young Stationery.....	12/01/86-11/30/87
Yuhan.....	12/01/86-11/30/87
Yu Shin Enterprise.....	12/01/86-11/30/87
Carton-Closing Staples and Staple Machines from Sweden: Kihlberg.....	12/01/86-11/30/87
Porcelain-on-Steel Cooking Ware from Taiwan: First Enamel Industrial.....	05/20/86-11/30/87
Countervailing duty proceedings: Litharge, Red Lead and Lead Stabilizers from Mexico.....	01/01/86-12/31/86
Pectin from Mexico.....	01/01/86-12/31/86
Porcelain-on-Steel Cookware from Mexico.....	03/07/86-12/31/87

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.53a(c) and 355.10(c).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: January 19, 1988.

[FR Doc. 88-1649 Filed 1-26-88; 8:45 am]

BILLING CODE 3510-DS-M

Industry Policy Advisory Committee for Trade Policy Matters

SUMMARY: In accordance with subsection 135(c) of the Trade Act of 1974, 19 U.S.C. 2155, as amended by the Trade Agreements Act of 1979, (Pub. L.

95-39), the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and 41 CFR Subpart 101-6.10 (1987), Federal Advisory Committee Management Rule, it has been determined by the Secretary of Commerce (the Secretary) and the United States Trade Representative (the USTR) that the reestablishment of the Industry Policy Advisory Committee for Trade Policy Matters is in the public interest.

Industry Policy Advisory Committee for Trade Policy Matters

The committee was established in 1980, and renewed in 1982 and 1984, to provide policy advice and information to the Secretary and the USTR on trade policy matters, including factors relevant to U.S. positions in trade negotiations, and on other matters arising in connection with the administration of U.S. trade policy. Members of the committee are appointed by and serve at the discretion of the Secretary and the USTR. It is proposed that the committee will meet at least semi-annually at the request of the Secretary and the USTR, and will function solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. The Trade Advisory Center, in the International Trade Administration of the Department of Commerce, administers the program.

Copies of the Committee's charter will be filed with appropriate committees of the Congress and copies will be forwarded to the Library of Congress.

EFFECTIVE DATE: March 8, 1988.

Membership: Representatives from industry or industry associations wishing to be considered for appointment to serve on this committee are requested to make application in writing to the Trade Advisory Center, Room H-4012, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3268. Comments and inquiries may be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Clare Soponis, Director, Trade Advisory Center, telephone (202) 377-3268.

Date: January 21, 1988.

Michael R. Czinkota,

Deputy Assistant Secretary for Trade Information and Analysis.

[FR Doc. 88-1650 Filed 1-26-88; 8:45 am]

BILLING CODE 3510-DR-M

National Bureau of Standards

[Docket No. 70222-7229]

Approval of Federal Information Processing Standards Publications 4-1, Representation for Calendar Date and Ordinal Date for Information Interchange, and 58-1, Representations of Local Time of Day for Information Interchange

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce (Secretary) has approved two revised standards, which will be published as FIPS Publications 4-1 (a revision to FIPS 4) and 58-1 (a revision to FIPS 58).

SUMMARY: On April 20, 1987, notice was published in the Federal Register (52 FR 12953) that three Federal Information Processing Standards (revisions to FIPS 4, 58, and 59) were being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to these standards were reviewed by NBS. On the basis of this review, NBS recommended that the Secretary approve two standards as Federal Information Processing Standards (FIPS) 4-1 and 58-1, and prepared a detailed justification document for the Secretary's review in support of that recommendation. NBS has decided not to propose standardization of FIPS PUB 59-1 at this time, pending revision of ANSI X3.51-1986.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

Each approved standard contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard, and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice.

EFFECTIVE DATE: These standards are effective July 30, 1988. Use by Federal agencies is encouraged when such use

contributes to operational benefits, efficiency or economy.

ADDRESS: Interested parties may purchase copies of these revised standards, including the technical specifications portions, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for these standards is set out in the Where to Obtain Copies Section of the announcement portion of each standard.

FOR FURTHER INFORMATION CONTACT: Shirley Radack, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 975-2833.

Ernest Ambler,
Director.

Date: January 19, 1988.

Federal Information Processing Standards Publication 4-1, 1987 Month Day

Announcing the Standard for Representation for Calendar Date and Ordinal Date for Information Interchange

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards in accordance with section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations.

1. *Name of Standard.* Representation for Calendar Date and Ordinal Date for Information Interchange (FIPS PUB 4-1).

2. *Category of Standard.* Federal General Data Standard, Representations and Codes.

3. *Explanation.* This standard provides a means of representing calendar date and ordinal date to facilitate interchange of data among information systems.

4. *Approving Authority.* The Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards, Institute for Computer Sciences and Technology.

6. *Cross Index.* a. FIPS PUB 58-1, Representations of Local Time of Day for Information Interchange.

b. American National Standard ANSI X3.30-1985, Representation for Calendar Date and Ordinal Date for Information Interchange.

c. American National Standard ANSI X3.43-1986, Representations of Local Time of Day for Information Interchange.

d. International Standard ISO 3307-

1975, Information Interchange—Representations of Time of the Day.

e. International Standard ISO 4031-1978, Information Interchange—Representation of Local Time Differentials.

7. *Objectives.* The objectives of this standard are to improve the utilization of data resources of the Federal Government and avoid unnecessary duplications and incompatibilities in the collection, processing and dissemination of data.

8. *Applicability.* This Federal Data Element and Representation Standard is made available for data interchange among executive departments and independent agencies, and for Federal data interchange with the non-Federal sector including industry, State, local and other governments, and the public at large.

9. *Implementation Schedule.* This standard becomes effective July 30, 1988. Use by Federal agencies is encouraged when such use contributes to operational benefits, efficiency, or economy.

10. *Specifications.* This standard adopts American National Standard ANSI X3.30-1985, Representation for Calendar Date and Ordinal Date for Information Interchange. The latter was approved on July 30, 1985 as a revision of ANSI X3.30-1971, and is published by the American National Standards Institute, 1430 Broadway, New York, NY 10018.

11. *Where to Obtain Copies.* Copies of this publication and the adopted specifications are available for sale by the National Technical Information Service, Springfield, VA 22161. (Sale of the specifications is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 4-1 (FIPS PUB 4-1) and title. When microfiche is desired, this should be specified.

Federal Information Processing Standards Publication 58-1, 1987 Month day

Announcing the Standard for Representations of Local Time of Day for Information Interchange

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards in accordance with section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations.

1. *Name of Standard.* Representations

of Local Time of Day for Information Interchange (FIPS PUB 58-1).

2. *Category of Standard.* Federal General Data Standard, Representations and Codes.

3. *Explanation.* This standard provides uniform time representations based upon both the 12- and 24-hour timekeeping systems. It provides a means for representing local time of the day in digital form for the purpose of interchanging information among data systems. It specifies the time elements and their sequencing, the use of separators between time elements and the representation of the meridiem designator.

4. *Approving Authority.* The Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards, Institute for Computer Sciences and Technology.

6. *Cross Index.* a. FIPS PUB 4-1, Representation for Calendar Date and Ordinal Date for Information Interchange.

b. American National Standard ANSI X3.30-1985, Representation for Calendar Date and Ordinal Date for Information Interchange.

c. American National Standard ANSI X3.43-1986, Representations of Local Time of Day for Information Interchange.

d. International Standard ISO 3307-1975, Information Interchange—Representations of Time of the Day.

e. International Standard ISO 4031-1978, Information Interchange—Representation of Local Time Differentials.

7. *Objectives.* The objectives of this standard are to improve the utilization of data resources of the Federal Government and avoid unnecessary duplication and incompatibilities in the collection, processing and dissemination of data.

8. *Applicability.* This Federal Data Element and Representation Standard is made available for data interchange among executive departments and independent agencies, and for Federal data interchange with the non-Federal sector including industry, State, local and other governments, and the public at large.

9. *Implementation Schedule.* This standard becomes effective July 30, 1988. Use by Federal agencies is encouraged when such use contributes to operational benefits, efficiency, or economy.

10. *Specifications.* This standard adopts American National Standard ANSI X3.43-1986, Representations of Local Time of Day for Information

Interchange. The latter was approved on June 23, 1986 as a revision of ANSI X3.43-1977, and is published by the American National Standards Institute, 1430 Broadway, New York, NY 10018.

11. *Where to Obtain Copies.* Copies of this publication and the adopted specifications are available for sale by the National Technical Information Service, Springfield, VA 22161. (Sale of the specifications is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 58-1 (FIPS PUB 58-1) and title. When microfiche is desired, this should be specified.

[FR Doc. 88-1599 Filed 1-26-88; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Permits; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of issuance of an experimental fishing permit.

SUMMARY: This notice announces the issuance of an experimental fishing permit (EFP) to U.S. fishermen to harvest groundfish as an incidental catch to a directed fishery for white croaker (*Genyonemus lineatus*) in the U.S. exclusive economic zone (EEZ) between Pt. Reyes and Franklin Point off the Coast of California. The permit authorizes the use of experimental fishing gear which is otherwise prohibited by Federal regulations. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan and its implementing regulations.

EFFECTIVE DATES: December 1, 1987 to December 31, 1988.

ADDRESSES: E.C. Fullerton, Regional Director, NMFS, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731. Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rodney R. McInnis, Chief, Fisheries Management Division, Southwest Region, NMFS, 213-514-6202, or William L. Robinson (Fisheries Management Division, Northwest Region, NMFS), 206-526-6142.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and its

implementing regulations at 50 CFR Part 663 specify that EFPs may be issued to authorize fishing that is otherwise prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at § 663.10.

An EFP application submitted by the Vietnamese Fishermen Association of America to use a pair trawl off the California coast to harvest groundfish incidentally to a directed fishery for white croaker was received on November 2, 1987. A notice describing the proposal and requesting public comment was published in the Federal Register on November 25, 1987 (52 FR 45217). The application was considered by the Pacific Fishery Management Council (Council) at its November 1987 public meeting in Portland, Oregon. The testimony received by the Council supported issuing the permit, and the Council recommended that NMFS issue the permit with appropriate restrictions. No public comments were received.

The experimental fishery will test the feasibility of conducting a successful fishery for white croaker with gear that replaces gill nets. If successful, the potential harm to marine birds and mammals will be greatly diminished. The applicant will be permitted to harvest groundfish incidental to a directed harvest for white croaker until December 31, 1988, with a pair trawl net of two- to three-inch mesh. Two domestic vessels will be involved in the fishery, which will operate in the EEZ off the coast of California between Point Reyes and Franklin Point. The Federal permit is contingent upon the applicant's possession of a California permit for the same purpose.

Not more than 1000 pounds of groundfish species regulated by 50 CFR Part 663 may be taken and retained, or landed from a fishing trip. The experimental fishing permit will be suspended if total landings reach 30,000 pounds of groundfish, though the Regional Director may restore the permit if he determines that adjustment of the operation will reduce bycatch sufficiently to conduct a relatively homogeneous croaker fishery. The permit includes data recording and reporting requirements and allows the Regional Director to place an observer on the permitted vessels.

Details or a copy of the permit may be obtained from either Regional Director (see **ADDRESSES**).

(16 U.S.C. 1801 et seq.)

Dated: January 21, 1988.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-1618 Filed 1-26-88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

DIS Courtesy Letter; DIS FL 2a and 2b

The Defense Investigative Service (DIS) is responsible for conducting personnel security investigations (PSIs) to determine an individual's suitability for a position of trust. This form is sent to references interviewed by the agent as a follow-up device to ascertain the professionalism and integrity of the investigative work force. The information collected serves to identify problem areas, the investigation of which may lead to administrative, disciplinary, or additional training actions. The increase in "responses" and "burden" hours are the consequences of an increased agency work force.

Responses: 14,670; Burden Hours: 1,467.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at the Office of Management and Budget, Desk Officer,

Room 32235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mrs. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Mrs. Pearl Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone 202/746-0933.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 21, 1988.

[FR Doc. 88-1614 Filed 1-26-88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

Reason for This Notice: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form and Applicable OMB Control Number: CHAMPUS/CHAMPVA Claim Form 500; CHAMPUS Form 500; 0704-0084 OMB Control Number.

Type of Request: Extension.

Annual Burden Hours: 2,408,000.

Needs and Uses: The CHAMPUS Form 500 is used by CHAMPUS beneficiaries and health care providers to file for reimbursement of health care services. The requested information is used to determine eligibility, appropriateness and cost of care, and whether services received are benefits.

Affected Public: Individuals or Households, State or Local Governments, Businesses or Other for Profit, Federal Agencies or Employees, Non-Profit Institutions and Small Businesses or Organizations.

Frequency: As Required to Obtain Benefits.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

OMB Desk Officer: Mr. Edward Springer Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mrs. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Mrs. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204,

Arlington, Virginia 22202-4302, telephone 202/746-0933.

Linda M. Bynum,

Alternate OSD Federal Register, Department of Defense.

January 21, 1988.

[FR Doc. 88-1615 Filed 1-26-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Tactical Directed Energy Weapons—Revisit; Closed Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Tactical Directed Energy Weapons—Revisit will meet in closed session on February 24-25, 1988 at the LTV Corporation, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review the original Task Force recommendations in light of changes in technology, threat, and requirements, and in the context of DOD and/or Congressional actions that may have affected the status of the original study effort.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 21, 1988.

[FR Doc. 88-1616 Filed 1-26-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

Advisory Council on Education Statistics (ACES); Meeting.

AGENCY: Education Department.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is

required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: February 25-26, 1988.

ADDRESS: February 25, 1988—Room 326, 555 New Jersey Avenue NW., Washington, DC 20208;

February 26, 1988—9th Floor Meeting Room, (AFT), 555 New Jersey Avenue NW., Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT:

Iris Silverman, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, Room 400J, Washington, DC 20208. Telephone: (202) 357-6831.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics is established under section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93-380. The Council is established to review general policies for the operation of the Center for Education Statistics (CES) in the Office of Educational Research and Improvement and is responsible for establishing standards to insure that statistics and analyses disseminated by the Center are of high quality and are not subject to political influence. The meeting of the Council is open to the public. The proposed agenda includes the following:

- Forecasting and Early Estimates,
- Postsecondary Educational Longitudinal Studies Program,
- Statistical Standards Program,
- Toward An Integrated Elementary-Secondary Data System,
- Council Business—Development of the Annual Report.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., Room 400J, Washington, DC 20208.

Date: January 20, 1988.

Chester E. Finn, Jr.,

Assistant Secretary and Counselor to the Secretary, Office of Educational Research and Improvement.

[FR Doc. 88-1577 Filed 1-26-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Privacy Act of 1974; Amendment of System Notices and New Routine Use Statement

AGENCY: U.S. Department of Energy.

ACTION: Proposed Revision; Establishment of New Routine Use for

DOE-33 "Personnel Medical Records" and DOE-35 "Personnel Radiation Exposure Records."

SUMMARY: Federal agencies are required by the Privacy Act of 1974, to publish in the *Federal Register* a notice of a change to an existing routine use of a primary system of records. The U.S. Department of Energy (DOE) proposes to change a routine use of DOE-33 "Personnel Medical Records" and DOE-35 "Personnel Radiation Exposure Records" to permit the disclosure of records maintained in these systems to the National Institute for Occupational Safety and Health (NIOSH), U.S. Department of Health and Human Services. Currently, NIOSH is permitted access to records maintained in these systems only for the purpose of conducting health hazard evaluations and epidemiological studies of workers at DOE's Feed Materials Production Center located at Fernald, Ohio and DOE's Portsmouth Gaseous Diffusion Plant at Piketon, Ohio. This notice will permit disclosure of records maintained in these systems to NIOSH for health hazard evaluations and epidemiological studies of workers at any DOE facility.

Comment procedures: Comments must be received by February 26, 1988. Written comments should be sent to: John H. Carter, MA-232.1, Chief of Freedom of Information and Privacy Acts, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5955.

If no comments to the contrary are received with respect to a particular proposed system, it is the intent of the DOE to operate any such system as proposed at the expiration of the 60-day advance notice period for informing Congress and the Office of Management and Budget of proposed systems changes.

FOR FURTHER INFORMATION CONTACT:

John H. Carter, MA-232.1, Chief of Freedom of Information and Privacy Acts, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5955
Abel Lopez, Office of General Counsel, GC-43, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8618.

SUPPLEMENTARY INFORMATION: Under the routine uses currently established for DOE-33 "Personnel Medical Records" and DOE-35 "Personnel Radiation Exposure Records", NIOSH may obtain access to these records for the purpose of conducting health hazard and epidemiological studies of workers only at DOE's Feed Materials Production Center located at Fernald,

Ohio and DOE's Portsmouth Gaseous Diffusion Plant at Piketon, Ohio. The purposes of these studies are to determine whether there are health effects from occupational exposure to chemical, radiation and physical hazards. The DOE, therefore, is amending the current routine use to permit NIOSH to obtain access to exposure records maintained in DOE-33 and DOE-35 for the purpose of conducting health hazard evaluations of workers at any DOE facility.

The Privacy Act provides that, a record may be disclosed, without the prior written consent of the individual to whom the record pertains, pursuant to a routine use. A routine use, with respect to disclosure of a record, is a use which is compatible with the purpose for which the record was collected. It has been determined that the proposed routine use is compatible because the records are maintained for purposes of assessing workers' health and safety and conducting health and mortality studies.

Issued in Washington, DC on January 21, 1988.

Harry L. Peebles,
Director of Administration.

DOE-33

SYSTEM NAME:

Personnel Medical Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed in Appendix A of 47 FR 14284, dated April 2, 1982, and the following additional locations:

U.S. Department of Energy, Allied Bendix Corporation, Kansas City Division, P.O. Box 1159, Kansas City, MO 64141

U.S. Department of Energy, Bettis Atomic Power Laboratory, P.O. Box 79, West Mifflin, PA 15122-0079.

U.S. Department of Energy, Dayton Area Office, P.O. Box 66, Miamisburg, OH 45342.

U.S. Department of Energy, Kansas City Area Office, Box 410202, Kansas City, MO 64141.

U.S. Department of Energy, Knolls Atomic Power Laboratory, P.O. Box 1072, Schenectady, NY 12301.

U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544.

U.S. Department of Energy, Naval Petroleum Reserves, P.O. Box 11, Tupman, CA 93276.

U.S. Department of Energy, Westinghouse Electric Corporation, Bettis Atomic Power Laboratory, Naval

Reactors Facility, P.O. Box 2068, Idaho Falls, ID 83403-2068.

U.S. Department of Energy, Strategic Petroleum Reserve, 900 Commerce Road East, New Orleans, LA 70123.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former U.S. Department of Energy (DOD) employees and contractor employees. This system includes individuals admitted to or treated at Kadlec Hospital, Richland, Washington, prior to September 9, 1956.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical histories on employees resulting from medical examinations and radiation exposure. In cases of injury, description of injury occurrence and treatment. In addition, medical records of periodic physical examinations and psychological testing, blood donor program records, audiometric testing, routine first aid, and other visits. Also, hospital in-patients at Kadlec Hospital. Results of monitoring individuals for exposure to chemical agents (not covered in DOE-35) and physical stress and related data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; U.S. Department of Energy Organization Act, including authorities incorporated by reference in Title III of the U.S. Department of Energy Organization Act; 5 U.S.C. 7901; Executive Order 12009; OMB Circular A-72.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Physicians, U.S. Department of Labor, various States' departments of labor and industry groups, and contractors use information (a) to ascertain suitability of an employee for job assignments with regard to health, (b) to provide benefits under Federal programs or contracts, and (c) to maintain a record of occupational injuries or illnesses and the performance of regular diagnostic and treatment services to patients.

A record from this system of records may be disclosed to officials of the National Institute for Occupational Safety and Health, for the purpose of conducting a health hazard evaluation of workers.

Additional routine use listed in Appendix B of 47 FR 14284, dated April 2, 1982.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer printouts, magnetic tape, paper, computer disc, and microfilm.

RETRIEVABILITY:

By name, social security number, and plant area.

SAFEGUARDS:

Active records are maintained in locked file cabinets in locked buildings. Inactive records are maintained in locked storage vaults.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are rendered illegible and destroyed by shredding, maceration, or burning, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters:

U.S. Department of Energy, Deputy Assistant Secretary for Safety, Health and Quality Assurance, EH-30, Germantown, MD 20545.

Field Offices:

The managers and directors of field locations identified as items 2 through 21 in Appendix A of 47 FR 14284, dated April 2, 1982, are the system managers for their respective portions of the system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Chief of Freedom of Information and Privacy Acts, U.S. Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1 through 21 in Appendix A of 47 FR 14284, dated April 2, 1982, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61578, September 16, 1980)).

b. Required identifying information: Applicable location or locations where individual is or was employed, full name requester, social security number, employer(s), and time period.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The individual who is the subject of the record, physicians, medical institutions, Office of Workers Compensation Programs, military retired pay systems records, Federal civilian retirement systems, pay and leave records, and Office of Personnel Management retirement life insurance and health benefits records system and personnel management records system.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-35

SYSTEM NAME:

Personnel Radiation Exposure Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed in Appendix A of 47 FR 14284, dated April 2, 1982, and the following additional locations:

U.S. Department of Energy, Amarillo Area Office, Pantex Plant, P.O. Box 30030, Amarillo, TX 79129-0030.

U.S. Department of Energy, Brookhaven Area Office, Upton, NY 11973.

U.S. Department of Energy, Dayton Area Office, P.O. Box 66, Miamisburg, OH 45342.

U.S. Department of Energy, Environmental Measurements Laboratory, 376 Hudson Street, New York, NY 10014.

U.S. Department of Energy, Radiological and Environmental Sciences Laboratory, CF-690, 785 DOE Place, Idaho Falls, ID 83402.

U.S. Department of Energy, Kansas City Area Office, P.O. Box 410202, Kansas City, MO 64141.

U.S. Department of Energy, Knolls Atomic Power Laboratory, P.O. Box 1072, Schenectady, NY 12301.

U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544.

U.S. Department of Energy, Naval Reactors Representative Office, General Delivery, Naval Base Branch, P.O., Charleston, SC 29408.

U.S. Department of Energy, Naval Reactors Representative Office, P.O. Box 21, Groton, CT 06340 U.S. Department of Energy, Naval Reactors Representative Office, Mare Island Naval Shipyard, P.O. Box 2053, Vallejo, CA 94592.

U.S. Department of Energy, Naval Reactors Representative Office, Newport News Shipbuilding and Dry

Dock Company, P.O. Box 973, Newport News, VA 23607.

U.S. Department of Energy, Naval Reactors Representative Office, Norfolk Naval Shipyard, P.O. Box 848, Portsmouth, VA 23705-0848.

U.S. Department of Energy, Naval Reactors Representative Office, Pearl Harbor Naval Shipyard, P.O. Box 128, Pearl Harbor, HI 96860.

U.S. Department of Energy, Naval Reactors Representative Office, Portsmouth Naval Shipyard, P.O. Box 2008, Portsmouth, NH 03801.

U.S. Department of Energy, Naval Reactors Representative Office, Puget Sound Naval Shipyard, P.O. Box 1A, Bremerton, WA 98314.

U.S. Department of Energy, New Brunswick Laboratory, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Pinellas Area Office, P.O. Box 2900, Largo, FL 34294.

U.S. Department of Energy, Rocky Flats Area Office, P.O. Box 928, Golden, CO 80402-0928.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Department of Energy, (DOE) employees and contractor employees, and any other persons having access to certain DOE facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

U.S. Department of Energy and contractor personnel and other individuals' radiation exposure records and other records in connection with registries of uranium, transuranics, or other elements encountered in the nuclear industry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act and Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

U.S. Department of the Navy uses these records to monitor radiation exposure at Naval activities of Naval and other personnel.

Nuclear Regulatory Commission uses these records to monitor radiation exposure of contractor personnel. U.S. Department of Energy and its contractors and consultants, other contractors, and organizations, including various States' departments of labor and industry groups, use these records to monitor radiation exposure of personnel.

U.S. Department of Defense uses these records for the limited purpose of identifying DOD and DOD-contractor personnel exposed to ionizing radiation during nuclear testing; and for conducting epidemiological studies of radiation effects on individuals so identified.

National Academy of Sciences and the Center for Disease Control (and appropriate management personnel of the U.S. Department of Health and Human Services) use these records for conducting epidemiological studies of the effects of radiation on individuals exposed to ionizing radiation.

National Institute for Occupational Safety and Health, for the purpose of conducting a health hazard evaluation of workers.

Additional routine uses 1, 2, 4, 7, 8, 9, and 10 listed in Appendix B of 47 FR 14284, dated April 2, 1982.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer printouts, paper records, index cards, magnetic tapes, punched cards, microfilm, and disc.

RETRIEVABILITY:

By name, alphanumeric code, and social security number.

SAFEGUARDS:

Records are maintained in locked file cabinets, locked safes, guarded areas, and secured buildings with access on a need-to-know basis.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within DOE are rendered illegible and destroyed by shredding, maceration, or burning, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters:

U.S. Department of Energy, Deputy Assistant Secretary for Safety, Health and Quality Assurance, EH-30, Germantown, MD 20545.

Field Offices:

The managers and directors of field locations 3, 4, and 6 through 18 in Appendix A of 47 FR 14284, dated April 2, 1982, and the additional locations listed above under System Location are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records

contains information about him/her should be directed to the Chief of Freedom of Information and Privacy Acts, U.S. Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 3, 4, and 6 through 18 in Appendix A of 47 FR 14284, dated April 2, 1982, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, geographic location(s) and organization(s) where requester believes such records may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, accident/incident investigations, film badges, dosimetry records, and previous employee records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-1659 Filed 1-26-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 87-74-NG]

North Canadian Resources, Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on December 18, 1987, of an application filed by North Canadian Resources, Inc. (North Canadian), for blanket authorization to import up to 200,000 Btu's per day of Canadian natural gas for short-term and spot market sales in the United States. Authorization is requested to import up to 146 Bcf for a two year term beginning on the date of the first delivery. The gas would be sold on a short-term or spot basis to U.S. purchasers including pipelines, local distribution companies, electric utilities, and commercial and industrial end-users. North Canadian would import natural gas for its own account, as well

as for the accounts of its foreign supplier clients. The specific terms of each import and sale would be negotiated on an individual basis, including price and volumes. North Canadian intends to utilize existing pipeline facilities in the United States and Canada. North Canadian agrees to notify ERA of the date of first delivery and to file quarterly reports.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than February 26, 1988.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4523. Michael T. Skinner, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this requested blanket import, it may designate a total amount of authorized volumes for the term rather than a daily or annual limit, in order to provide the applicant with maximum flexibility of operation. Further, ERA will condition the authorization on the filing of quarterly reports to facilitate ERA monitoring of the operation and effectiveness of the blanket program.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person

wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.s.t., February 26, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of North Canadian's application is available for inspection

and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 21, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-1660 File 1-26-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-60-NG]

Northwest Pipeline Corp.; Application to Import Natural Gas Imports From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of application to amend authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of receipt on October 26, 1987, of the application of Northwest Pipeline Corporation (Northwest) to amend Northwest's authority to import Canadian gas from its Canadian supplier, Westcoast Transmission Company Limited (Westcoast), at Kingsgate, British Columbia, to increase its currently authorized import volume from 100 MMcf to up to 152 MMCF per day through October 31, 1989.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene or notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are due to be filed no later than 4:30 p.m. on February 26, 1988.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586-8162.
Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Ave. SW., Washington, DC 20585 (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Northwest is currently authorized under

DOE/ERA Opinion and Order No. 56 (Order 56), issued July 5, 1984, to import up to 100 MMcf per day of Canadian natural gas at Kingsgate through October 31, 1989, at a price not to exceed \$4.94 per MMBtu.¹

Northwest requests an amendment to its existing import authority to increase the import volume during the balance of the primary import term from 100 MMcf per day to up to 152 MMcf per day at Kingsgate. The incremental gas volumes, like current volumes imported by Northwest at Kingsgate, would be delivered directly into the facilities of Pacific Gas Transmission Company (PGT) and then transported by PGT to Northwest at an interconnecting point near Spokane, Washington, and at secondary points along PGT's system in Idaho, Washington, and Oregon.

The gas imported by Northwest from Westcoast at Kingsgate is purchased under a contract dated September 23, 1960, as amended (Kingsgate sales agreement). The Kingsgate sales agreement provides for purchases of up to 152 MMcf per day, effective November 1, 1987, under specific terms and conditions which have most recently been amended by a letter agreement dated September 16, 1987 (Kingsgate amendment). The Kingsgate amendment modifies the take provisions and the two-part rate structure contained in a letter agreement dated October 27, 1986, amending both the Kingsgate sales agreement and the Fourth Service Agreement that covers the Huntingdon point of entry imports. The Kingsgate amendment, effective November 1, 1987, applies to the gas, including the incremental volumes requested here, sold under the Kingsgate sales agreement as amended, during the final two contract years, November 1987 through October 1989.

¹ Order 56 is the most recent in a series of import orders related to Northwest's Kingsgate authority. This authority originated in a Federal Power Commission order issued September 21, 1973 (Docket CP73-332). Subsequent orders amended Northwest's import authority in response to changes both in its contractual arrangements with Westcoast and in related National Energy Board (NEB) export authorizations. In particular, ERA Opinion and Order No. 38 (Order 38), issued December 21, 1981, continued Northwest's authority to import natural gas at a price not to exceed the Canadian border price of \$4.94 per MMBtu. The order extended the Kingsgate import authority in accordance with the terms of Northwest's gas purchase agreement with Westcoast and included a phased-in reduction of volumes conforming to Westcoast's NEB Export License CL-4. Order 56 continued the pricing authority and granted Northwest authority to shift up to 100 MMcf per day of Canadian gas authorized for import at Sumas, Washington, to the Kingsgate point of entry. That authority continues through October 31, 1989.

Under the Kingsgate amendment, the two-part rate includes a demand charge for gas purchased at the Kingsgate delivery point equal to an aggregate, determined monthly, of the following fixed cost components of the four cost of service elements for transporting the gas sold by Westcoast to Northwest to the Kingsgate delivery point: (i) The Alberta Natural Gas Company Ltd. (Alberta Natural) fixed cost component net of credits applicable to certain interruptible transportation services provided by Alberta Natural to third parties and several other specified adjustments; (ii) the Kingsgate demand charge representing the fixed administrative costs incurred by Westcoast and allocated to the gas sold to Northwest; (iii) The Pan-Alberta Gas Ltd. fixed cost component applicable to the cost of transporting through its system the gas delivered to Northwest at Kingsgate and; (iv) the NOVA, an Alberta Corporation, fixed cost component for transportation of gas sold to Northwest by Westcoast. Northwest estimates this demand charge to be less than seven million dollars annually.

The commodity rate will be \$1.50 per MMBtu initially. This rate is to be recalculated quarterly beginning January 1, 1988, under a formula that adjusts this September/October 1987, base period rate to reflect subsequent changes in two different fuels. The first is Westcoast's sale price of gas to British Columbia Hydro and Power Authority (Hydro) for residential and commercial customers. The second is the sales price of Bunker C fuel oil in the Seattle and Portland areas. The factor of change by which the base price is to be adjusted is weighted at 55 percent for gas and 45 percent for fuel oil. The price of the comparable gas is to be the average purchase price paid by Hydro during the three calendar months immediately preceding the effective date of the recalculated charge. The price of the fuel oil is to be similarly averaged from prices reported in the *Bunkerfuels Report* for the agreed upon areas.

Additionally, either party may initiate renegotiation of the commodity charge at any time under certain conditions, including relevant pricing considerations such as changes in alternate fuel price or availability, changes in price of Northwest's domestic supply or Northwest permanently becoming an open-access transporter.

According to the terms of the agreement, deficient annual purchases of three percent or less in a contract year will be added to the minimum annual volume for the following contract year and paid for when actually taken.

Conversely, up to three percent of any excess purchases in one contract year, if total purchases do not exceed 105 percent of the minimum annual volume, will be subtracted from the minimum annual volume in the subsequent year. Deficiency volumes in excess of three percent must be paid for but can be made up in a subsequent year.

Under this amendment, Northwest agrees to take or pay for, at the commodity rate, a minimum annual volume of gas which, together with those volumes of gas purchased from Westcoast during the same contract year under the Fourth Service Agreement, shall equal 45 percent of Northwest's actual system gas sales made during each such year. This represents an increase of two percent of the system gas sales over its previous commitment. Purchases from Westcoast for resale under its rate schedules X-36 and X-46 are not to be included as a part of this minimum annual volume. Northwest's actual system sales are to be increased by certain qualifying displacement gas volumes and released domestic gas volumes including any volume of Westcoast's or Northwest's firm system supply gas that is sold, either by Westcoast, or by a third party to whom such gas has been temporarily released, to one of Northwest's distribution or pipeline sales customers or to any end-user that could be served by such a distribution or pipeline customer and which, by mutual agreement between Northwest and Westcoast, constitutes a market sale that could have been made by Northwest at its posted tariff rates. However, in calculating the take-or-pay obligation, the qualifying displacement gas volumes are to be subtracted from the 45 percent take-or-pay portion of the system gas sales. Northwest claims the modified take-or-pay provision ultimately will reduce its take-or-pay obligation over the remainder of the term.

The minimum annual volume provisions are subject to renegotiation if Canadian or U.S. regulatory policies or rulings change or Northwest becomes an open-access transporter of gas on a permanent basis.

In support of its application, Northwest asserts that authorization of the requested additional daily volumes will enable it to meet system supply requirements, particularly in light of a concurrent reduction in its contract demand for purchases from Westcoast at Sumas, Washington. Further, Northwest claims that the Kingsgate amendment provides its most import arrangement with flexible market

responsive terms ensuring that the gas will be priced competitively in the markets served.

In sum, Northwest submits that the provisions for quarterly adjustments in the commodity price, the inclusion in its pricing formula of the prevailing price of Bunker C fuel oil in its market area and the linking of its minimum annual volume requirements to the actual level of its annual pipeline sales are within its existing authorization and makes its proposed amended Kingsgate import arrangement more responsive to its changing market situations and more competitive with alternate fuels.

The decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines, under which the competitiveness of the import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that the proposed amended import arrangement is competitive and will be market responsive over the remaining term of the import authority. Parties opposing the amended arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to this proceeding and to have written comments considered as a basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protest and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.s.t., February 26, 1988.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, and oral presentation, as conference, or trial-type hearing. Any request to file additional comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Northwest's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on January 21, 1988.

Robert L. Davies,
Director, Office of Fuels Programs, Economic
Regulatory Administration.
[FR Doc. 88-1661 Filed 1-26-88; 8:45 am]
BILLING CODE 6450-01-M

[ERA Docket No. 87-52-NG]

Windward Energy and Marketing Co.; Order Granting Blanket Authorization to Import Natural Gas

AGENCY: Economic Regulatory
Administration, Department of Energy.
ACTION: Notice of order granting blanket
authorization to import natural gas.

SUMMARY: The Economic Regulatory
Administration (ERA) of the Department
of Energy (DOE) gives notice that it has

issued an order granting Windward
Energy & Marketing Company
(Windward Energy) blanket
authorization to import natural gas from
Canada. The order issued in ERA
Docket No. 87-52-NG authorizes
Windward Energy to import up to 450
Bcf of natural gas over two-year period.

A copy of this order is available for
inspection and copying in the Natural
Gas Division Docket Room, GA-076,
Forrestal Building, 1000 Independence
Avenue, SW., Washington, DC, 20585,
(202) 586-9478. The docket room is open
between the hours of 8:00 a.m. and 4:30
p.m., Monday through Friday, except
Federal holidays.

Issued in Washington, DC, January 21,
1988.

Robert L. Davies,
Director, Office of Fuels Programs, Economic
Regulatory Administration.
[FR Doc. 88-1662 Filed 1-26-88; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project Nos. 6873-002, et al.]

Hydroelectric Applications (STS Engineers Ltd., et al.); Applications Filed With the Commission

Take notice that the following
hydroelectric applications have been
filed with the Federal Energy Regulatory
Commission and are available for public
inspection:

1 a. **Type of Application:** Surrender of
License.

b. **Project No.:** 6873-002

c. **Date Filed:** November 9, 1987.

d. **Applicant:** STS Engineers Ltd.

e. **Name of Project:** Southside II.

f. **Location:** On the U.S. Bureau of
Reclamation's Collbran Project
Southside Canal in Mesa County,
Colorado.

g. **Filed Pursuant to:** Federal Power
Act, 16 U.S.C. 791(a)-825(r).

h. **Applicant Contact:** Mark J.
Sundquist, STS Consultants Ltd., 3340
Ranger Road, Lansing, MI 48906, (517)
321-4964

i. **FERC Contact:** Hector M. Perez,
(202) 376-1669.

j. **Comment Date:** February 18, 1988.

k. **Description of Project:** The license
for this project was issued on June 30,
1986, for an installed capacity of 3,219
project would be economically
infeasible. Construction has not
commenced.

l. This notice also consists of the
following standard paragraphs: B and C.

2 a. **Type of Application:** Amendment
of License.

b. **Project No.:** 2216-001.

c. **Date Filed:** November 29, 1984, and
amended on September 30, 1987.

d. **Applicant:** Power Authority of the
State of New York.

e. **Name of Project:** Niagara.

f. **Location:** On the Niagara River in
the Towns of Lewiston and Niagara,
Niagara County, New York.

g. **Filed Pursuant to:** Federal Power
Act, 16 U.S.C. 791(a)-825(r).

h. **Contact Person:** Mr. Charles M.
Pratt, Senior Vice President and General
Counsel, Power Authority of the State of
New York, 10 Columbus Circle, New
York, NY 10019, (212) 397-6200.

i. **FERC Contact:** Thomas Owen
Murphy (202) 376-9829.

j. **Comment Date:** February 17, 1988.

k. **Description of Project:** The license
for the Niagara Project was issued on
January 30, 1958, and consists of two
intake structures on the Niagara River,
two water supply conduits, a forebay,
the Lewiston Pump-Generating Plant
with a rated capacity of 240 MW, the
Lewiston Reservoir, the Robert Moses
Plant with a rated capacity of 1950 MW,
and associated facilities. The forebay
serves as the tailrace for the Robert
Moses Plant. The licensee proposes: (1)
A new intake/outlet structure at the
Lewiston Reservoir; (2) two new 22-foot-
diameter steel lined and concrete-
reinforced power tunnels approximately
700 and 725 feet long connecting the new
intake structure to the proposed
powerhouse; (3) two new 30-MW pump-
turbine units in a common trench
installed in a low-profile powerhouse, 96
feet wide by 310 feet long; (4) a new
tailrace channel, approximately 140 feet
deep and varying in width from 60 feet
at the powerhouse to 140 feet deep at
the forebay; (5) upgrading of each of the
existing 175 MW generating units at the
Robert Moses Niagara Plant with new
units capable of 200 MW; (6) a new
1,500-foot-long, 230-kV overhead
transmission line crossing the forebay
and connecting to the existing 230-kV
switchyard; and (7) other
appurtenances. The licensee estimates
that this expansion would generate an
additional 965 GWh of peak daytime
energy, a reduction of off-peak energy,
and total annual energy could vary
between an increasing of 30 GWh to a
reduction of 120 GWh depending on the
actual efficiency of the new runners.

l. **Purpose of Project:** The additional
project energy would be sold to the
licensee's customers.

m. This notice also consists of the
following standards paragraphs: B and
C.

3 a. **Type of Application:** Surrender of
Exemption.

b. Project No.: 6938-003.
 c. Date Filed: September 18, 1987.
 d. Applicants: Thomas W. Weathers II, Wilson B. Humphries, Jr., and Roland M. Webb.
 e. Name of Project: Pinecrest Lake Project.
 f. Location: On South Fork Stanislaus River, within the Stanislaus National Forest, in Tuolumne County, California.
 g. Filed Pursuant to: Energy Security Act of 1980, Section 408, 16 U.S.C. 2705 and 2708 *as amended*.
 h. Applicant Contact: Mr. Thomas W. Weathers II, 3188 Highway 108, P.O. Box 68, Strawberry, CA 95375.
 i. FERC Contact: Ahmad Mushtag, (202) 376-1900.
 j. Comment Date: February 17, 1988.
 k. Description of the Proposed Action: Applicants request surrender of their exemption for the Pinecrest Lake Project that would have utilized the existing Pacific Gas and Electric Company's (PG&E) Strawberry Dam and would have consisted of: (1) A 21-inch-diameter, 727-foot-long penstock; (2) a powerhouse containing four generating units with a total installed capacity of 600 kW operating under a head of 118 feet; (3) an afterbay located adjacent to the powerhouse; and (4) a 1,400-foot-long, 17.2-kV transmission line connecting with an existing PG&E transmission line.
 l. This notice also consists of the following standard paragraphs: B, C and D2.
 4 a. Type of Application: Surrender of License.
 b. Project No.: 7944-004.
 c. Date Filed: December 3, 1987.
 d. Applicant: Great Western Power & Light, Inc.
 e. Name of Project: Mike Unit Project.
 f. Location: On the San Pitch River, Sanpete County, Utah.
 g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).
 h. Applicant Contact: Michael J. Graham, Great Western Power & Light, Inc., P.O. Box 1929, 1930 Mesquite Avenue, Suite 12, Lake Havasu City, AZ 86403, (602) 855-1615.
 i. FERC Contact: Mr. Don Wilt, (202) 376-9807.
 j. Comment Date: February 17, 1988.
 k. Description of Proposed Action: On September 24, 1985, a license was issued to Great Western Power & Light, Inc. to construct, operate, and maintain the Mike Unit Project No. 7944. The project would have consisted of a small diversion structure, a penstock, a powerhouse with a total capacity of 1,500 kW, a tailrace, a transmission line, and appurtenant facilities.
 Licensee states that it has decided to surrender the license due to the

bankruptcy of the financing firm for the project. No construction has begun at the project.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

5 a. Type of Application: Major License (over 5 MW).

b. Project No.: 10098-000.

c. Date Filed: September 25, 1986.

d. Applicant: City of Point Pleasant, WV, and WV Hydro, Inc.

e. Name of Project: Gallipolis.

f. Location: Ohio River, Mason County, West Virginia and Gallia County, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: James B. Price, Ph.D., WV Hydro, Inc., 120 Calumet Ct., Aiken, SC 29801, (803) 642-2749.

i. FERC Contact: Dean Wight, (202) 376-9821.

j. Comment Date: February 17, 1988.

k. Competing Application: Project No. 9042-000.

Date Filed: March 22, 1985.

l. Description of Project: The proposed project would use the existing Gallipolis Locks and Dam, owned and operated by the U.S. Army Corps of Engineers, Huntington District, P.O. Box 2127, Huntington, WV 25721, and would consist of (1) a proposed reinforced concrete powerhouse 250 feet long and 62 feet wide housing two proposed turbine-generators of 24.4 MW capacity each (during the first stage of construction), and a similar powerhouse with two proposed turbine-generators of 8 MW capacity each (during the second stage of construction proposed for 1996); (2) a proposed 138-kV transmission line two miles long; and (3) appurtenant facilities. The estimated annual energy production is, upon completion of the first phase of construction, 228 GWh; upon completion of the second phase, 293 GWh. Project power would be sold to Virginia Power. The net hydraulic head would be 23 feet.

m. This notice also consists of the following standard paragraphs: A4, B, and C.

6 a. Type of Application: Preliminary Permit.

b. Project No.: 10469-000.

c. Date Filed: September 4, 1987.

d. Applicant: Gem Irrigation District.

e. Name of Project: Dike Hydroelectric Project.

f. Location: Occupies in part, lands administered by the Bureau of Land Management on the Snake River, near the town of Glenns Ferry, in Elmore County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 792(a)-825(r).

h. Applicant Contact: Carl L. Myers, Myers Engineering Company, P.A., 750 Warm Springs Avenue, Boise, ID 83712, (208) 336-1425.

i. FERC Contact: Thomas A. Dean, (202) 376-9275.

j. Comment Date: February 17, 1988.

k. Competing Application: P-10465-000, Date Filed: Sept. 1, 1987.

l. Description of Project: The proposed project would consist of: (1) A 100-foot-high roller compacted concrete dam; (2) a 460-acre reservoir with a storage capacity of 12,500 acre-feet and a water surface elevation of 2,572 feet msl; (3) a powerhouse adjacent to the dam containing two generating units with a total installed capacity of 50 MW operating at 46 feet of hydraulic head; and (4) a 3.2-mile-long, 138-kV transmission line.

The applicant estimates the average annual energy production to be 263 GWh. The approximate cost of the studies under the permit would be \$750,000.

m. Purpose of Project: Applicant intends to sell the power generated at the proposed facility.

n. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

7 a. Type of Application: Conduit Exemption.

b. Project No.: 10500-000.

c. Date Filed: November 2, 1987.

d. Applicant: The City of Wichita Water Department.

e. Name of Project: Wichita Water Department.

f. Location: City of Wichita, Sedgwick County, Kansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Ms. Anne F. Harris, Black & Veatch, P.O. Box 8405, Kansas City, MO 64114, (913) 339-7060.

i. FERC Contact: Dean Wight, (202) 376-9821.

j. Comment Date: February 18, 1988.

k. Description of Project: The proposed project would use the existing 66-inch water supply conduit located at the existing water treatment plant, and would consist of: (1) A proposed 36-inch-diameter steel penstock; (2) a proposed masonry powerhouse; (3) two proposed turbine-generators of 468 kW combined capacity; (4) a proposed 480-volt underground transmission line 500 feet long; and (5) appurtenant facilities. The estimated annual energy production is 2.9 GWh. Project power would be used by the applicant. The net hydraulic head is 90 feet.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

8 a. **Type of Application:** Transfer of License.

b. **Project No.:** 2614-009

c. **Date Filed:** November 4, 1987.

d. **Applicants:** City of Vanceburg, Kentucky and City of Hamilton, Ohio.

e. **Name of Project:** Greenup.

f. **Location:** Ohio River in Scioto County, Ohio.

g. **Filed Pursuant to:** Section 38 of the Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. **Applicant Contact:** Mr. Kirk Howard Betts, Esq., Dickinson, Wright, Moon, Van Dusen & Freeman, 1901 L Street NW., Washington, DC 20036, (202) 457-0160.

i. **FERC Contact:** Peter K. Lyse, (202) 376-9479.

j. **Comment Date:** February 22, 1988.

k. **Description of Proposed Action:** On March 29, 1976, a major license was issued to the City of Vanceburg, Kentucky for the Greenup Project No. 2614, which has been constructed and is in commercial operation. Applicants propose to transfer the project license to the City of Hamilton, Ohio, pursuant to a settlement agreement negotiated by the parties to settle litigation and to cure an existing default on the bond issue to finance construction of the project.

l. This notice also consists of the following standard paragraphs: B and C.

Standard Paragraphs

A3. Development Application

Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application

Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit

Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit

Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary permit

Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (10 and (9) and 4.36.

A9. Notice of Intent

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on

the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the Particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. William C. Wakefield II, Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments

States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, Federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88-29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 825(b), that Commission findings as to facts must be supported by substantial evidence.

All other Federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be set to the Applicant's representatives.

D2. Agency Comments

Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Agency Comments

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the

purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: January 19, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1587 Filed 1-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-154-000, et al.]

Columbia Gas Transmission Corp. et al.; Natural Gas Certificate Filings

January 21, 1988.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP88-154-000]

Take notice that on January 5, 1988, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, S. E. Charleston, West Virginia 25314, filed in Docket No. CP88-154-000 an application pursuant to section 7 of the Natural Gas Act and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the firm sale of natural gas to three new wholesale customers, an increase in firm sales of natural gas to an existing customer and for the construction and operation of pipeline facilities for the proposed sales, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gas proposes the following sales services and either the use of existing facilities or the construction and operation of new facilities for the delivery of gas to these customers:

(1) The firm sale of up to 100 decatherms of gas per day (Dth/d) to Northeast Ohio Natural Gas Corporation (Northeast) pursuant to Columbia Gas' Rate Schedule SGS in Zone 4 and the use of an existing delivery point located in Wayne County, Ohio. Northeast has reimbursed Columbia Gas \$8,000 for this facility. The delivery point was originally installed to accommodate an interruptible transportation service under Part 284 of the Commission's Regulations.

(2) The firm sale of up to 2,000 Dth/d to Ohio Cumberland Gas Company (Ohio Cumberland) pursuant to Columbia Gas' Rate Schedule SGS in Zone 4 and the construction and operation of an interconnection and measuring facility for the delivery of gas in Knox County, Ohio. Estimated cost of these facilities is \$12,200.

(3) The firm sale of up to 2,000 Dth/d to Orwell Natural Gas Company

(Orwell) pursuant to Columbia Gas' Rate Schedule SGS in Zone 4 and construction and operation of an interconnecting and measuring facility for the delivery of gas in Ashtabula County, Ohio. The estimated cost of these facilities is \$18,700.

(4) An increase of 500 Dth/d of firm sales to Suburban Fuel Gas, Inc. (Suburban) in Zone 4 from 6,598 under Columbia Gas' Rate Schedule G to 7,098 Dth/d under Columbia Gas' Rate Schedule CDS and the use of a delivery point that is presently under construction to provide an interruptible transportation service under Part 284 of the Commission's Regulations. Estimated cost of these facilities is \$30,600.

Comment date: February 11, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88-156-000]

Take notice that on January 6, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP88-156-000 an application pursuant to section 7(b) of the Natural Gas Act permission and approval to abandon in place 0.85 mile of dual 18-inch diameter pipelines and appurtenant facilities comprising a trenched underwater crossing of the Atchafalaya River on Transco's main line in St. Landry and Pointe Coupee Parishes, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that the erratic nature of the Atchafalaya River has resulted in river-bank erosion at the crossing site of the dual 18-inch diameter pipelines that Transco proposes to abandon, causing the rupture of one of the pipelines and threatening the integrity of the other. According to Transco both of the 18-inch diameter pipeline have been taken out of service.

Transco further states that in anticipation of the potential for such a rupture occurring to the 18-inch diameter pipelines, it has recently constructed and placed in service, pursuant to Commission authorization in Docket No. CP86-388-000, a 36-inch diameter bored crossing of the Atchafalaya River at the same location as the pipelines Transco proposes to abandon. Additionally, Transco states that an aerial crossing of dual 30-inch diameter pipelines supported by a suspension bridge is in service at the same location.

Comment date: February 11, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP88-157-000]

Take notice that on January 6, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478 pursuant to section 7(b) of the Natural Gas Act, filed in Docket No. CP88-157-000 an application requesting an order permitting and approving a partial abandonment of service to Willmut Gas & Oil Company (Willmut), related to a Service Agreement dated June 1, 1983, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, United requests authorization to reduce Willmut's contractual Maximum Daily Quantity from 49,688 Mcf/d to 30,000 Mcf/d of natural gas and Willmut's Minimum Billing Demand from 23,918 Mcf/d to 21,918 Mcf/d of natural gas. United states that both arrangements will provide Willmut and its customers with an opportunity of obtaining supplies of natural gas at a competitive price from other sources and is, therefore, in the public interest.

Comment date: February 11, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Williams Natural Gas Company

[Docket No. CP86-631-001]

Take notice that on January 4, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP86-631-001 an amendment to its pending application filed July 18, 1986, in Docket No. CP86-631-000 pursuant to section 7(c) of the Natural Gas Act so as to revise its original proposal to become an open-access pipeline under Order No. 436, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Williams states that its proposal in Docket No. CP86-631-000 was filed in conjunction with and predicated on a proposed Stipulation and Agreement filed in Docket No. RP86-32-000. Williams further states that it has now filed a revised Stipulation and Agreement in Docket No. RP86-32-000 *et al.* which would involve a number of changes in the manner in which it would restructure its services to enable it to become an open access transporter. Consistent with the revised settlement proposal, Williams explains, it has also

revised its certificate proposal by filing the instant amendment.

Specifically, Williams requests (1)(a) certificate authorization under section 7 of the NGA to provide partial requirements sales service under new Rate Schedule PR(A); (b) certificate authorization under section 7 of the NGA to modify its requirements service obligations under existing Rate Schedules F, G and I provide revised requirements service under a new Rate Schedule F in conjunction with partial requirements service to certain former C and I Rate Schedule consumers under new Rate Schedule PR(B); (c) certificate authorization under section 7 of the NGA for a new, experimental interruptible deferred delivery service under Rate Schedule IDDS for shippers under Rate Schedules FTS and ITS; (d) blanket authorization under section 7 of the NGA, with pre-granted abandonment, for shippers under Rate Schedules FTS and ITS to utilize such service under Rate Schedule IDDS; (e) blanket authorization under section 7 of the NGA for all existing sales customers from time to time to elect or convert to service under new Rate Schedule PR(A) or new Rate Schedules F and PR(B), as appropriate, and to convert and/or reduce the level of service under those rate schedules, as provided under the new sales service agreements executed under those rate schedules; and (f) pregranted abandonment of its presently authorized service levels under the NGA to the extent of such conversions and/or reductions under Rate Schedules PR(A), F, or PR(B); and (g) authority to abandon service under Rate Schedule P to the level of any reduced contract demand under any new sales service agreement under Rate Schedule P; and (2) blanket certificate authorization for the transportation of gas on behalf of others with pre-granted abandonment authorization, pursuant to Section 7 of the NGA and Order Nos. 436 and 500 under new Rate Schedules FTS and ITS.

Williams states that it would provide blanket transportation for others in compliance with the conditions in § 274.221(c) of the Commissions' Regulations on the basis of its Order Nos. 436 and 500 transportation proposal as described in the amended application and in Article II and Appendix C of the Revised Stipulation in Docket Nos. RP86-32, *et al.* Williams further states that it would provide firm and interruptible transportation under proposed Rate Schedules FTS and ITS as set forth in the tariff sheets in Appendix C of such Revised Stipulation and that the rates for such service would be in full compliance with the provisions

of § 284.7 of the Commission's Regulations.

Comment date: February 11, 1988, in accordance with the first subparagraphs of Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice

and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-1588 Filed 1-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C187-303-001, et al.]

Sun Exploration and Production Company, et al.; Notice of Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates¹

January 21, 1988.

Take notice that each of the Applicants listed herein has filed an

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and petitions which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 8, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practices and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,
Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft ³	Pressure base
C187-303-001, A, Dec. 17, 1987.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Various Purchasers, Edinburg Unit, Hidalgo County, Texas.	(1).....	
C187-304-001, (G-3884), B, Dec. 17, 1987.	.....do.....	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Edinburg Unit, Hidalgo County, Texas.	(2).....	
C188-178-000, B, Dec. 9, 1987.	Alfred C. Glassell, Jr., Suite 2300, First City National Bank Bldg., 1021 Main Street, Houston, Texas 77002.	Natural Gas Pipeline Company of America, C.P. Taylor, et al. Well No. 1 Unit, JGS Field, Panola County, Texas.	(3).....	
C188-225-000 (C176-241), B, Jan. 4, 1988.	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, Ca. 94120-7309.	Natural Gas Pipeline Company of America, Spearman East Field Hansford County, Texas.	(4).....	
C188-205-000 (C163-918), B, Dec. 28, 1987.	.....do.....	Williams Natural Gas Company, Pandhandle Field, Gray County, Texas.	(4).....	
C188-203-000 (C167-1174), B, Dec. 28, 1987.	.....do.....	Northern Natural Gas Company, a Division of Enron Corp., Killebrew Field, Roberts County, Texas.	(4).....	
C188-224-000 (C168-1316), B, Jan. 14, 1988.	.....do.....	Panhandle Eastern Pipe Line Company Waynoka N.E. Field, Woods County, Oklahoma.	(5).....	
C188-199-000, A, Dec. 31, 1987.	Amoco Production Company, P.O. Box 50879, New Orleans, La. 70150.	Transco Energy Marketing Company Vermilion 46 Field, (Block 35 South Half), Offshore Louisiana.	(6).....	

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft ³	Pressure base
CI88-198-000, A, Dec. 17, 1987.	.....do.....	South Pelto Area Blocks 9 & 10 and Ship Shoal Area Block 68 (East Half), Offshore Louisiana.	(⁶).....	
CI88-212-000 (CI76-238), B, Dec. 21, 1987.	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Okla. 73125.	Texas Eastern Transmission Corporation, S/4 West Cameron Block 522 (Block 543 Field), OCS-G-2009, Offshore Louisiana.	(⁷).....	
CI88-210-000 (CI72-157), B, Dec. 21, 1987.	.....do.....	Arkla Energy Resources, a division of Arkla, Inc. N.W. O'Keene Field, Blaine County, Oklahoma.	(⁸).....	
CI88-214-000 (G-6635), B, Dec. 21, 1987.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Chester-ville Field, Colorado County, Texas.	(⁹).....	
CI88-197-000, F, Dec. 30, 1987.	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77252.	El Ebanito Field, Starr County, Texas ...	(¹⁰).....	
CI88-206-000 (CI84-266), B, Dec. 23, 1987.	.....do.....	Colorado Interstate Gas Company, Greenwood Field, Morton County, Kansas.	(¹¹).....	
CI88-213-000 (G-13330), B, Dec. 21, 1987.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	W.M. Laughlin, Premont Field, Jim Wells County, Texas.	(¹²).....	
CI88-223-000 (G-14127), B, Jan. 4, 1988.	.....do.....	Southern Natural Gas Company, Napoleonville Field, Assumption Parish, Louisiana.	(¹⁴).....	
CI88-218-000, B, Jan. 22, 1987.	Bogert Oil Company, 2601 N.W. Expressway, Suite 1000W, Oklahoma City, Okla. 73112.	ANR Pipeline Company, NW/4 Sec. 5-21N-13W, Cheyenne Valley Field, Major County, Oklahoma.	(¹⁵).....	
CI88-217-000, B, Dec. 22, 1987.	.....do.....	ANR Pipeline Company, NW/4 Sec. 32-22N-13W, Cheyenne Valley Field, Major County, Oklahoma.	(¹⁶).....	
CI88-202-000, B, Dec. 28, 1987.	Kirkpatrick Oil & Gas Co., 1300 N. Broadway Drive, Oklahoma City, Okla. 73118.	ANR Pipeline Company, Laverne Field, Harper County, Oklahoma.	(¹⁷).....	
CI88-207-000, B, Dec. 21, 1987.	Holmac Oil Company, P.O. Box 5370, Hobbs, New Mexico 88241.	El Paso Natural Gas Company, Delaware Field, Ward County, Texas.		(¹⁸)
CI88-208-000, B, Jan. 21, 1987.	Midland Resources, Inc., 300 West Texas Suite 601, Midland, Texas 79701.	El Paso Natural Gas Company, Pecos Valley, North Field, Pecos County, Texas.	(¹⁹).....	
CI88-204-000 (CI66-1329), B, Dec. 28, 1987.	Cities Service Oil & Gas Corp., P.O. Box 300, Tulsa, Okla. 74102.	Northern Natural Gas Company, a Division of Enron Corp., Starbuck Unit, Lots 1 and 2, S/2 NE/4 Sec. 5, and SE/4 Sec. 5-21N-33W, Ellis County, Oklahoma and E/2 Sec. 17-20N-22W, NE/4 Sec. 4-22N-22W, Woodward County, Oklahoma.	(²⁰).....	
CI88-209-000, B, Dec. 21, 1987.	Midland Resources, Inc.....	West Lake Natural Gasoline Company, Nena Lucia (Strawn Reef) Field, Nolan County, Texas.	(²¹).....	
CI88-226-000 (CI71-473), B, Jan. 5, 1988.	Union Exploration Partners, Ltd., P.O. Box 7600, Los Angeles, Calif. 90051.	Transcontinental Gas Pipe Line Corp., Fresh Water Bayou Field, Vermilion Parish, Louisiana.	(²²).....	
CI88-221-000 (CI61-1436), B, Jan. 4, 1988.	Mobil Exploration & Producing North America Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	United Gas Pipe Line Company, N. Turtle Bayou Field, Terrebonne Parish, Louisiana.	(²⁴).....	
CI88-201-000 (CI86-123-000), B, Dec. 28, 1987.	ENSTAR Corporation, P.O. Box 2120, Houston, Texas 77252-2120.	Texas Eastern Transmission Corporation, East Cameron 118 Field, Off-shore Louisiana.	(²⁵).....	
CI88-219-000, B, Dec. 22, 1987.	Horseshoe Operating, Inc., 511 West Texas, Midland, Texas 79701.	K N Energy, Inc., Bradshaw Field, Greenley County, Kansas.	(²⁶).....	
CI88-216-000 (CI73-309), B, Dec. 22, 1987.	Phillips 66 Natural Gas Company, 990-G Plaza Office Bldg., Bartlesville, Okla. 74004.	Transwestern Pipeline Company, Pan-handle-Hugoton Area in various counties in Texas.	(²⁷).....	
CI88-215-000 (CI75-620), B, Dec. 22, 1987.	Perry R. Bass, 201 Main Street, Fort Worth, Texas 76102.	Williams Natural Gas Company, Hobart Ranch-Buffalo Wallow Area, Hemphill County, Texas.	(²⁸).....	
CI88-79-000 (CI68-39)....	Mesa Limited Partnership, One Mesa Square, P.O. Box 2009, Amarillo, Texas 79189-2009.	Northern Natural Gas Company, Division of Enron Corp., Reising # 1-36 Well, Como Field, Beaver County, Oklahoma.	(²⁹).....	

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft ³	Pressure base
CI60-739)	.....do.....	Northern Natural Gas Company, Division of Evins #1-20 and Evins #2-20 Hanna Lake Field, Ochiltree County, Texas.	(29).....	
CI64-1531, B, Oct. 30, 1987.	.....do.....	Lone Star Gas Company, a Division of ENSERCH Corporation, Benedum Lease #1-7 Washington East Field, McClain County, Oklahoma.	(29).....	
CI87-884-000, B, Nov. 9, 1987.	Perkins Energy Co., P.O. Drawer 878, Duncan, Okla. 73534.	Arkla Energy Resources, a division of Arkla, Inc., Northwest Okeene Field, Blaine County, Oklahoma.	(30).....	
CI87-625-001, B, Dec. 22, 1987.	Questa Energy Corporation, P.O. Box 19297, Amarillo, Texas 79114.	Northern Natural Gas Company, Division of Enron Corp., Breitenbach #1, Edwards County, Kansas.	(31).....	
CI87-695-000, B, Dec. 22, 1987.	.....do.....	Transwestern Pipeline Company, Sam Reger #1, Lipscomb County, Texas.	(32).....	
CI88-164-000, B, Dec. 7, 1987.	DYCO Petroleum Corporation, 7130 So. Lewis Ave., Suite 300, Tulsa, Okla. 74136.	Natural Gas Pipeline Company of America, Buffalo Wallow Field and Washita Creek Field, Hemphill County, Texas.	(33).....	
CI88-167-000, B, Dec. 7, 1987.	Nielson Enterprises Inc., P.O. Box 370, Cody, Wyoming 82414.	ANR Pipeline Company, Clayton #1 Well Sec. 29-T21N-R17W, Woodward County, Oklahoma.	(34).....	
CI88-179-000, B, Dec. 10, 1987.	J.C. Barnes Jr., et al., P.O. Box 505, Midland, Texas 79702.	El Paso Natural Gas Company, Superior Federal No. 3 Well, Sec. 4-T20S-R29E, Burton Field, Eddy County, New Mexico.	(35).....	

¹ Sun requests a three-year blanket limited-term certificate with pregranted abandonment to make sales for resale in interstate commerce of gas which is related and subject to the limited-term abandonment in Docket No. CI87-304-001. Sun filed on February 11, 1987, in Docket No. CI87-303-000 requesting the same authorization for seven other sales and omitted this contract from its application.

² Sun requests a three-year blanket limited-term abandonment of sales to Tennessee under an April 1, 1952, contract which is on file as Sun Exploration and Production Company FERC G.R.S. No. 258.

In support of its application Sun states that Tennessee has reduced its takes of gas and projects that reduced takes will continue through the next three years; thus Sun is subject to substantially reduced takes without payment. Sun states that Tennessee has agreed to release for three years all NGA gas not needed by Tennessee. Sun avers that Tennessee will receive take-or-pay credit for the gas released by Tennessee and sold by Sun. According to Sun all released gas will be surplus gas that Tennessee does not need to meet its current marketing demands and the gas will remain subject to recall by Tennessee. Sun states that the deliverability is approximately 1,500 Mcf/day and that the gas is NGPA section 106(a) rollover gas. Sun plans to sell the gas to other parties under certificate authorization in Docket No. CI87-303-001.

³ Applicant requests permanent abandonment of its sale of gas to Natural.

In support of its application, Applicant states that Natural has heretofore relied upon Lone Star Gathering Company (Lone Star) to gather the gas in question and transfer it to Natural's own facilities. Lone Star sought and received Commission authorization to abandon these gathering facilities by order of the Commission dated November 13, 1987 (41 FERC ¶ 61,182). The order was conditioned upon the producers of the gas dedicated to Natural obtaining abandonment of their obligations to continue sales to Natural. Applicant states that the deliverability is approximately 35 Mcf/day of minimum rate gas. Applicant plans to sell the gas in the intrastate market or pursuant to its small producer certificate issued in Docket No. CS71-708.

⁴ Certain acreage has been assigned to Atlantic Energy (USA) Corporation, effective 7-1-87.

⁵ Certain acreage has been assigned to Cross Timbers Oil Company, effective 7-1-87.

⁶ Applicant is filing for authorization to initiate sales under Gas Purchase Contract dated 12-1-87.

⁷ Buyer has exercised its right under the contract to terminate the Agreement dated 9-1-75, as delivery is less than 1,000 Mcf per day.

⁸ Contract terminated.

⁹ By Assignment effective 10-1-87, Sun assigned its interest in Property No. 447840, Chesterville Unit (B.P. No. 85890) to Mobil Exploration and Producing U.S. Inc.

¹⁰ By Assignment effective 12-1-86, Tenneco acquired certain acreage from Champlin Petroleum.

¹¹ Tenneco sold certain acreage to Beresco Properties, Inc., effective 8-1-86.

¹² Acreage is depleted. No production has occurred from dedicated Singer Sand since 1970.

¹³ Not used.

¹⁴ ARCO assigned all its interest subject to Rate Schedule No. 480 to Jolen Production Company, effective 4-1-87.

¹⁵ ANR Pipeline Company has agreed to release the NW/4 and the Ramon Jordon 1-5 Well from its gas contract so that Bogert Oil Company can get the well connected to a low pressure gathering system. ANR Pipeline's high pressure system and constant curtailment has caused the well to be shut-in the majority of the time.

¹⁶ ANR Pipeline Company has agreed to release the SW/4 and the Ethel Jordon #32-1 Well from its gas contract so that Bogert Oil Company can get the well connected to a low pressure gathering system. ANR Pipeline's high pressure system and constant curtailment have caused the well to be shut-in the majority of the time.

¹⁷ The expired gas purchase contracts for the two wells contained a low price and Kirkpatrick desires the opportunity to obtain the current market price for its gas. The wells have also been subjected to reduced takes.

¹⁸ El Paso discontinued purchasing the casinghead gas. In the absence of a purchaser of the gas, the oil wells will have to be shut-in with the damage or permanent loss of oil and gas reserves.

¹⁹ Lease has been subject to substantially reduced takes. Applicant has secured an alternative gas purchase proposal with improved takes. Applicant also requests a pregranted abandonment for a term of three years for sales of the abandoned gas under its small producer certificate.

²⁰ By Assignment of Oil and Gas Leases, and Term Mineral Conveyance and Bill of Sale both executed 6-23-87, effective 4-1-87, Cities assigned leases to Amoco Production Company attributable to the Starbuck Unit, Ellis County, Oklahoma, and the producing well located thereon, with certain depth limitations. There is no anticipated drilling on the remaining leases under this contract insofar as depths above the base of Mississippian System.

²² Applicant requests permanent abandonment. Lease has been subject to substantially reduced takes. Applicant has secured an alternative gas purchase proposal with improved takes. Applicant also requests a pregranted abandonment for a term of three years for sales of the abandoned gas under its small producer certificate.

²² Only one well has produced gas under the "deep" Contract dated 11-20-70. The reservoir was depleted in 1976. This well was recompleted up the hole and came under the jurisdiction of another Gas Sales Agreement which covers depths above 12,600 feet. Since there are no remaining reserves dedicated to the "deep" contract both parties have agreed to terminate the contract.

²³ Not used.

²⁴ Reserves depleted and leases released.

²⁵ As of 1-1-87 all wells located on offshore leases OCS-G-0938 and OCS-G-1974, East Cameron Block 118, Offshore Louisiana were plugged and abandoned. Ownership in the leases reverted to the lessor and ENSTAR and ENSTAR Corporation no longer own a working interest in the leases dedicated to the contract filed in Docket No. C186-123-000 and was designated ENSTAR Rate Schedule No. 34.

²⁶ Applicant proposes to abandon the sale of gas to KN Energy, Inc. for economic reasons due to buyer's alleged refusal to honor the contract price.

²⁷ Applicant alleges that existing exchange is uneconomical and both parties have agreed to terminate the contract.

²⁸ Applicant no longer has leasehold interests in acreage within the dedicated contract area and production from this acreage has ceased.

²⁹ Applicant is seeking abandonment due to depletion of reserves. Such sales of gas were from acreage covered under Applicant's small producer certificate issued in Docket No. CS67-82, and were previously covered under Docket Nos. C186-39, C160-739 and C164-1531. Applicant also mentions in its filing certain other sales which were once covered under certificates issued in Docket Nos. C166-828, C167-669, C167-877 and C161-272 for which abandonment authorization has already been granted.

³⁰ By order issued October 22, 1987, Applicant was granted permanent abandonment authorization in Docket No. C187-884-000 for its sale of gas to Arkla from the Northwest Okeene Field, Blaine County, Oklahoma. Applicant now requests pregranted abandonment for a period of three years for sales for resale in interstate commerce of the released gas under its small producer certificate in Docket No. CS72-43. Deliverability is approximately 991 Mcf/d. The gas is NGPA section 104 flowing Gas (17%) and 106(a) (83%).

³¹ By order issued September 15, 1987, Applicant was granted permanent abandonment authorization in Docket No. C187-625-000 for its sale of gas to Northern from the Breitenbach #1, West Wil Field, Edwards County, Kansas. Applicant now requests pregranted abandonment for a period of three years for sales for resale in interstate commerce of the released gas under its small producer certificate in Docket No. CS87-82-000. Deliverability is approximately 20 Mcf/d. The gas is NGPA section 104 flowing gas.

³² By order issued September 15, 1987, Applicant was granted permanent abandonment authorization in Docket No. C187-695-000 for its sale of gas to Transwestern from the Sam Reger #1, South Follett (Morrow) Field, Lipscomb County, Texas. Applicant now requests pregranted abandonment for a period of three years for sales for resale in interstate commerce of the released gas under its small producer certificate in Docket No. CS87-82-000. Deliverability is approximately 50 Mcf/d. The gas is NGPA section 106(a) gas.

³³ Applicant requests permanent abandonment of sales of gas to Natural. The contracts terminated effective October 13, 1987, by mutual agreement. Applicant also requests pregranted abandonment for a period of three years. Deliverability is approximately 293 Mcf/d. The gas is NGPA section 104 flowing gas.

³⁴ Applicant requests limited-term abandonment with pregranted abandonment through November 30, 1989, for one sale of gas to ANR. The purchaser cannot purchase gas due to market constraints. Deliverability is approximately 250 Mcf/d. The gas is NGPA section 104 minimum rate gas.

³⁵ Applicant requests one-year limited-term abandonment with pregranted abandonment of one sale of gas to El Paso. Applicant states gas production from the Superior Federal No. 3 Well has been curtailed for an indefinite period of time. Current deliverability is 400 Mcf/d. The well produces NGPA section 104 1973-1974 biennium gas.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-1589 Filed 1-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-179-001, et al.]

General Mills, Inc. et al., Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

January 21, 1988.

Take notice that the following filings have been made with the Commission.

1. General Mills, Inc.

[Docket No. QF88-179-001]

On December 22, 1987, General Mills, Inc. (Applicant), of 54 South Michigan Avenue, Buffalo, New York 14203, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Buffalo, New York. The facility will consist of a

combustion turbine generator unit and a heat recovery steam generator. The electric power production capacity of the facility will be 3.8 MW. The primary energy source will be natural gas. The facility is scheduled to begin operation on December 1, 1988.

2. Union Carbide Corporation

[Docket No. QF88-137-000]

On December 28, 1987, Union Carbide Corporation (Applicant), of 1 River Road, P.O. Box 670, Bound Brook, New Jersey 08805 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Bound Brook, New Jersey. The facility will consist of one combustion turbine generator and one heat recovery steam generator. Steam recovered from the facility will be used for chemical process requirements. The net electric power production capacity will be 5,400 kilowatts. The primary energy source will be natural gas. Construction of the facility will begin in the second quarter of 1988.

3. Pawtucket Power Associates

[Docket No. QF88-166-000]

On December 22, 1987, Pawtucket Power Associate, c/o Energy Management, Inc., 200 Boylston Street, Chestnut Hill, Maine 02167 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Pawtucket, Rhode Island. The facility will consist of one combustion turbine generator, one heat recovery steam generator and one extraction condensing steam turbine generator. Thermal energy recovered from the facility will be used by Colfan, Inc. for manufacturing of food products. The net electric power production capacity will be 53,536 kilowatts. The primary energy source will be natural gas. The facility is expected to be on-line in January 1991.

4. HL Power Company

[Docket No. QF88-189-000]

On January 11, 1988, the HL Power Company (Applicant), c/o GeoProducts Corporation of 1330 Broadway, Oakland, California 94612, submitted for filing an application for certification of a

facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Lassen County, California. The electric power production capacity will be approximately 32 megawatts, net. The facility will consist of a waste wood-fired steam generator and an extraction/condensing steam turbine generator. The primary energy source will be wood waste consisting of shredded and/or chipped logging waste, unmerchantable timber and precommercial thinnings. Natural gas will be used for start-up purposes, however, such fossil fuel use will not exceed one percent of the total energy input to the facility during any calendar year period. Installation of the facility is expected to begin in February 1988.

5. Methane Resource Associates, Inc.

[Docket No. QF87-639-001]

On December 21, 1987, Methane Resource Associates, Inc. (Applicant), of 225 Frances Lane, Barrington, Illinois 60010, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Albion, New York. The facility will consist of gas-fired internal combustion engine generators. The electric power production capacity will be 3 megawatts. The primary energy source will be biomass in the form of landfill gas. There are no plans to use natural gas, oil, or coal.

The original application was filed September 3, 1987 and granted on October 28, 1987 (41 FERC ¶62,096).

The recertification is requested due to a change of ownership from Methane Resource Development, Inc. to Methane Resource Associates, Inc. All other facility characteristics remain the same.

6. City of Watsonville

[Docket No. QF88-177-000]

On December 28, 1987, City of Watsonville (Applicant), of 250 Main Street, Watsonville, California 95076, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Wastewater Treatment Plant in Santa Cruz County, California. The facility will consist of a gas-fired engine generator unit and necessary heat recovery system. Thermal energy recovered from the facility will be used to heat digesting sludge. The electric power production capacity of the facility will be 600 kW. The primary energy source will be sludge gas produced by anaerobic digestion process of wastewater sludge supplemented by natural gas. The facility is scheduled to begin operation in mid-1988.

7. LaChute Hydro Company, Inc., et al

[Docket No. QF88-171-001]

On December 31, 1987, LaChute Hydro Company Inc., et al. (Applicant), c/o Olof S. Nelson, Consolidated Hydro, Inc., 2 Greenwich Plaza, Greenwich, Connecticut 06830, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 4.9 MW hydroelectric facility (FERC P. 5760) will be located on the LaChute River in Ticonderoga, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State, or Federal law, including those regarding siting, construction, operation, licensing, and pollution abatement.

8. LaChute Hydro Company, Inc., et al

[Docket No. QF88-172-001]

On December 31, 1987, LaChute Hydro Company, Inc., et al. (Applicant), c/o Olof S. Nelson, Consolidated Hydro, Inc., 2 Greenwich Plaza, Greenwich, Connecticut 06830, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 3.6 MW hydroelectric facility (FERC P. 5762) will be located on the LaChute River in Ticonderoga, New York.

A separate application is required for a hydroelectric project license,

preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State, or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

9. Procter & Gamble Paper Products Co.

[Docket No. QF88-175-000]

On December 28, 1987, Procter & Gamble Paper Products Co. (Applicant), of 1 Procter & Gamble Plaza, Cincinnati, Ohio 45202-3315, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Oxnard, California. The facility will consist of a combustion turbine generator and a heat recovery steam generator. Thermal energy recovered from the facility will be used in paper manufacturing process. The electric power production capacity of the facility will be approximately 20 MW. The primary source of energy will be natural gas.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-1590 Filed 1-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-102-004 and RP86-102-005]

Equitable Gas Co., a Division of Equitable Resources, Inc.; Compliance Filing

January 22, 1988.

Take notice that on January 11, 1988 Equitable Gas Company, a Division of Equitable Resources, Inc. (Equitable) tendered for filing the following tariff sheets to its FERC Gas Tariff in compliance with the Commission's Letter Order of July 23, 1987, and Order Denying Rehearing issued November 5, 1987, in this docket.

Original Volume No. 3

Second Revised Sheet No. 3
Second Revised Sheet No. 5
Second Revised Sheet No. 6
Second Revised Sheet No. 7
Second Revised Sheet No. 9
Second Revised Sheet No. 13
Second Revised Sheet No. 14
Second Revised Sheet No. 18
Second Revised Sheet No. 19
Second Revised Sheet No. 20
Second Revised Sheet No. 21
Second Revised Sheet No. 22
Second Revised Sheet No. 23
Second Revised Sheet No. 24
Second Revised Sheet No. 25
Second Revised Sheet No. 26
Second Revised Sheet No. 27
Second Revised Sheet No. 31
Second Revised Sheet No. 38

On December 23, 1987, Equitable submitted certain tariff sheets unaccompanied by a fee in this proceeding which were inadvertently incomplete and should be disregarded. Equitable further states that the January 11, 1988 compliance filing replaces and substitutes for that filing of December 23, 1987.

Equitable states that copies of this filing have been served on all its jurisdictional customers and affected state regulatory commissions. Equitable requests waiver of all Commission rules and regulations as may be necessary to permit the tendered tariff sheets to become effective December 23, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before January 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1638 Filed 1-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-49-000]

Florida Gas Transmission Co.; Petition for a Limited Waiver

January 22, 1988.

Take notice that on January 11, 1988, Florida Gas Transmission Company (FGT) filed a petition for a limited waiver of § 154.38(d)(4) of the Federal Energy Regulatory Commission's (Commission) regulations. FGT requests that the Commission grant to FGT a limited waiver of § 154.38(d)(4) to allow FGT to treat as "natural gas" and to flow through its purchased gas adjustment (PGA) clause the costs of ethane, or any mixture of ethane, butane, or propane, purchased by FGT and injected into its system supply during a limited one-year period.

FGT states that it may have an opportunity to purchase from various suppliers quantities of ethane and/or some ethane-propane-butane mixture and inject such products into its system. Since such products do not appear to fall within the above-referenced regulations, FGT has requested a limited one-year waiver of the PGA regulations, or alternatively, that the Commission clarify that ethane and ethane mixtures fall within the definition of "purchased gas costs."

FGT asserts that granting the requested limited waiver or clarification would allow it to reduce its overall weighted average cost of gas, that all its customers will benefit therefrom, and that granting the relief requested on an expedited basis is in the public interest. FGT would modify facilities to receive the ethane mixtures under its blanket certificate granted in Docket No. CP82-553 and pursuant to 18 CFR Part 157.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before February 2, 1988. All protests will be considered by the Commission but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition filed in this proceeding are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1639 Filed 1-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL88-8-000]

Maryland People's Counsel, et al.; Filing

January 20, 1988.

Take notice that on January 12, 1988, the Maryland People's Counsel (MPC) and the Consumer Advocate Division of the West Virginia Public Service Commissions (WV Consumer Advocate) (joint complainants) tendered for filing pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e (1982), and Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR § 385.206) a joint Complaint against Allegheny Generating Company (AGC). The joint complainants request that the Commission condition any further collection by AGC of rates pursuant to its formula rate upon the inclusion of an annual equity reopener provision in its tariffs.

Copies of this filing have been served upon all parties affected by this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1640 Filed 1-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-139-000]

Metropolitan Edison Co.; Filing

January 22, 1988.

Take notice that on December 10, 1987, Metropolitan Edison Company (Met-Ed) tendered for filing pursuant to Commission Order dated June 18, 1987 revised rate sheets to reflect an agreed upon reduction in Met-Ed's rates effective as of January 1, 1988. Met-Ed states that the rate sheets reflect a \$147,000 reduction.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1641 Filed 1-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-146-000]

Placid Oil Co.; Petition for Declaratory Order Disclaiming Jurisdiction

January 21, 1988.

Take notice that on December 24, 1987, Placid Oil Company (Placid), 3900 Thanksgiving Tower, Dallas, Texas 75201, filed in Docket No. CP88-146-000 a petition for an order declaring that Green Canyon gas line and Ship Shoal Platform 207 in offshore Louisiana are respectively gathering and production facilities pursuant to section 1(b) of The Natural Gas Act and thereby, are exempt from the jurisdiction of the Commission, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Placid states that the Green Canyon gas line is a 51-mile, 16-inch gathering line, commencing at its floating production platform located on Green Canyon Block 29 and terminating at the interconnection with a jurisdiction pipeline on Ship Shoal Block 207, all in offshore Louisiana. It is stated that oil and gas accumulations have been found

underlying Green Canyon Blocks 29, 31 and Ewing Bank Block 999. It is further stated that the Green Canyon area is located in water depths of 1,500 to 2,200 feet or deeper and more than 80 miles offshore Louisiana. It is also stated that the floating production platform is located in a water depth of 1,540 feet. Because of this water depth, it is explained, it is not possible to install the customary fixed production platform and it is also not possible to have all of the customary separation and treatment facilities on the floating production platform that are normally found on fixed platforms.

Placid notes that at the floating production, the full well stream would be a mixture of natural gas, entrained liquids and liquefiables, crude oil, condensate and saltwater. It is stated that in order to separate the crude oil and condensate from the gas and to bring the natural gas production up to the quality specifications of the interstate pipeline purchasers and transporters, it is necessary, before the gas component and crude oil and condensate components are in marketable conditions, for the full well stream to undergo a series of production-related activities, namely, separation, treatment and processing. Placid states that the Green Canyon floating production platform, in contrast to fixed platforms, is of limited size and even more limited load-bearing capabilities. Placid states that the platform must accommodate the required drilling, workover and well maintenance facilities and, because of its limited size, is able to accommodate only limited separation and treatment facilities required for gathering the mixture to the Ship Shoal Block 207 platform. Placid states that it intends to perform limited separation functions upon the floating production platform which are required to permit the natural gas, condensate and crude oil to be gathered from the wells to the Ship Shoal Block 207 platform where the customary separation and treatment facilities are to be installed.

Placid states that the floating production platform separation process would result in two streams—one, gas which still contains amounts of water, condensate and entrained liquefiables, which will be gathered through a 51-mile, 16-inch gathering line extending from the floating production platform to Ship Shoal Block 207 platform, also referred to as the Green Canyon gas gathering line. It is stated that the line's design capacity is 200 MMcf of natural gas per day. Placid states that the Green Canyon gas production is projected to peak at 140 MMcf of natural gas per day.

It is explained that the 16-inch gathering line and the floating production platform would have excess capacity to gather gas from surrounding Green Canyon and Ewing Bank leases. Placid states that the other stream would consist of oil, condensate, water and varying amounts of gas and be gathered through a parallel 51-mile, 14-inch pipeline from the floating production platform to the Ship Shoal Block 207 platform. Placid further states that the continuous operation of the field would necessitate the movement of gas, oil, condensate and water to the Ship Shoal Block 207 platform without interruption, explaining, that any time either pipeline has to be shut in for any reason, the remaining line, liquid or gas, would be operated as a two-phase flowline, that is, gas, oil and condensate, and water would be transported through a single line in order to maintain production.

Placid states that the production process will be continued on the Ship Shoal Block 207 platform where the final separation of liquids (oil and condensate) from gas and water and the necessary treating and dehydration of gas will occur. It is stated that the pipeline quality oil and condensate would be delivered to a common carrier pipeline for transmission onshore. It is also stated that the pipeline quality gas would be delivered to an interstate gas pipeline on Ship Shoal Block 207. The gas will be transported by the interstate gas pipeline to an onshore gas processing plant for the extraction of ethane, butane, propane and heavier liquefiables. Therefore, Placid states that the production process would not be completed until the gas is finally processed at the onshore processing plant.

Placid further states that it is apparent that both the 51-mile 16-inch gas line and the parallel 51 mile 14-inch liquid line perform the primary function of flowlines and gathering lines because the customary separation and treatment processes are performed at the terminus of the pipelines at the Ship Shoal Block 207 platform. Placid maintains that the sole purpose of the 16-inch diameter line is to gather gas produced from the Green Canyon Block 29 field to the Ship Shoal Block 207 platform located in shallow water where the production functions of treating, dehydration processing and measuring can be completed upon the platform for delivery to the interstate pipeline. Therefore, Placid concludes that the Green Canyon line and the Ship Shoal Block 207 platform facilities should be exempt from the jurisdiction of the Commission pursuant to section 1(b) of the Natural Gas Act as the

primary function of the so-stated facilities is gathering and production.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 11, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1642 Filed 1-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-120-000]

Williston Basin Interstate Pipeline Co.; Request Under Blanket Authorization

January 21, 1988.

Take notice that on December 9, 1987, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP88-120-000 a request pursuant to § 157.205 and § 157.216(b) ¹ of the Commission's Regulations under the Natural Gas Act for authorization to abandon a sales tap and appurtenant facilities under its blanket certificate authorization issued in Docket Nos. CP82-487-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in its request which is on file with the Commission and open to public inspection.

Williston Basin proposes to abandon a sales tap located on its Elk Basin-Billings Red Line, Yellowstone County, Montana. It is stated the customer, Montana-Dakota Utilities Co. (Montana-Dakota), a Division of MDU Resources Group, Inc., no longer requires service through this tap because the retail customer previously receiving service through this tap is no longer in business. Williston Basin further states that the sales tap will be abandoned on its existing transmission right-of-way.

¹ This notice was erroneously issued under section 7(b) on January 6, 1988, with the notice period to expire January 27, 1988.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1643 Filed 1-26-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180753; FRL-3320-1]

Arizona Commission of Horticulture and Agriculture; Receipt of Application for Emergency Exemption To Use Hydrogen Cyanamide and Notification of Issuance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt and issuance.

SUMMARY: EPA has received a request for an emergency exemption from the Arizona Commission of Agriculture and Horticulture (hereafter referred to as the "Applicant") to use the active ingredient hydrogen cyanamide (Dormex™) to promote uniform bud break in 7,500 acres of table grapes grown in Arizona. Dormex contains an unregistered active ingredient. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and, time permitting, to solicit public comment before making the decision whether or not to grant the exemption. Due to the critical nature of the emergency situation, there was insufficient time to solicit public comments. The Agency has granted a specific exemption to Arizona for this use of Dormex.

FOR FURTHER INFORMATION CONTACT:

By mail:

Libby Pemberton, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number:
Rm. 716, Crystal Mall #2, 1921
Jefferson Davis Highway, Arlington,
VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant requested the Administrator to permit the use of an unregistered plant regulator, hydrogen cyanamide (CAS 420-04-2), manufactured as Dormex™, by SKW Trostberg Aktiengesellschaft, to promote uniform bud-break in table grapes grown in Arizona. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

The Applicant indicated that Arizona growers of early market table grapes are facing economic losses due to increasing competition from foreign imports, particularly from Mexico. The Applicant states that table grapes may not experience adequate winter chilling to promote uniform budbreak and fruit ripening in the spring. Urban expansion is reaching the areas where vineyards are located. The vineyards are now under the influence of the urban heat island effect. As a result, cane growth can be delayed and uneven, causing the harvest to be late and allowing foreign competition to dominate the market. Currently there are no registered materials to promote uniform bud-break in grapes.

Dormex will be applied by ground at a maximum rate of 4 gallons (16 pounds active ingredient) per acre. Application will be made once in dormancy after pruning sometime between December 25 and January 31, 1988 to approximately 7,500 acres of table grapes in Arizona.

The regulations governing section 18 require publication of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Dormex™ contains an active ingredient which has not yet been registered by the Agency.

The Applicant submitted the exemption request close to the time applications of the pesticide were to be made. Consequently, there was not adequate time to allow for the opportunity for public comment. The Agency decided to grant the exemption after determining that an emergency situation existed and that the proposed use would not pose adverse effects to

man and the environment. The specific exemption was granted on December 21, 1987, and expires on January 31, 1988.

Dated: January 12, 1988.

Douglas D. Camp,

Director, Office of Pesticide Programs.

[FR Doc. 88-1384 Filed 1-26-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180752; FRL-33195]

Receipt of Application for Specific Exemption to Use Methyl 3-[[[4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate; Solicitation of Public Comment

AGENCY: Environmental Protection agency (EPA)

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Ohio Department of Agriculture (hereafter referred to by State or as "Applicant") for use of the unregistered product Harmony, to control wild garlic in wheat in Ohio. Harmony, manufactured by E.I. duPont de Nemours and Company, contains the unregistered active ingredient methyl 3-[[[4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate. EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before February 11, 1988.

ADDRESS: Three copies of written comments, bearing the identifying notation "OPP-180752," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA

Information submitted in any comment concerning this notice may be claimed confidential by marking any part of all or that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for

inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:
By mail:

Robert A. Forrest, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7889).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of the unregistered product, Harmony, to control wild garlic in wheat. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

The Applicant has requested a maximum of one postemergence application of Harmony. Applications will be made between the two-leaf and boot stage of wheat when wild garlic is 6 to 12 inches high. A maximum of 0.67 ounce of product is proposed to be applied per acre in Ohio. A maximum of 50,000 acres of wheat is proposed to be treated in Ohio. If all of the acreage were treated, a maximum of 2,094 pounds of product would be needed in Ohio.

Applications are proposed to be made using ground equipment only. All applications are proposed to be made by or under the direct supervision of certified applicators. Ohio requested authorization to make treatments through April 1988.

The Applicant claims that emergency conditions exist due to the presence of wild garlic bulbets in harvested wheat. Grain sold with garlic bulbets present is generally docked on a per-bulbulet basis. The Applicant claims that the new regulations under the U.S. Grain Standards Act which lower by two-thirds the amounts of wild garlic allowable in marketed wheat have contributed to the need for a better means of controlling garlic. If these new standards cannot be met, prices will be docked severely or the grain may be refused altogether. In either event, the economic consequences could be

substantial if growers are unable to control wild garlic in wheat.

The Applicant claims that the registered alternatives currently available do not provide a sufficient level of control of wild garlic. The applicant claims that wheat growers have traditionally used 2,4-D and dicamba to control this weed. Specifically, the Applicant claims that these pesticides only provide 20 to 75 percent control of wild garlic.

This notice does not constitute a decision by EPA on the application itself. It is the Agency's policy to solicit public comment on applications involving unregistered active ingredients. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before February 11, 1988 and should bear the identifying notation "OPP-180752." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Ohio Department of Agriculture.

Dated: January 7, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-1385 Filed 1-26-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Common Carrier Docket 79-184, FCC 88-15]

Inquiry Into the Policies To Be Followed in the Authorization of Common Carrier Facilities To Meet North Atlantic Telecommunications Needs During the 1991-2000 Period

AGENCY: Federal Communications Commission.

ACTION: Proposed rule of particular applicability.

SUMMARY: This Notice of Proposed Rulemaking proposes tentative policies and guidelines for the construction and use of common carrier transmission facilities in the North Atlantic Region during the 1991-2000 planning period.

The United States International Service Carriers submitted a single plan, calling for the introduction of a TAT-9 fiber optical cable in 1991, while Comsat submitted three alternative plans which do not contemplate the need for additional cable facilities during the planning period. The Commission tentatively adopted guidelines which conclude, *inter alia*, that the introduction of a TAT-9 optical fiber cable as early as 1991 will serve the public interest. As currently proposed, the cable would land in the United States, Canada, the United Kingdom, France and Spain. The TAT-9 cable will provide restoration capability for the TAT-8 cable, provide digital connectivity with the MAT-2 and EMOS-1 cables, promote national security interests, enhance media and route diversity, provide further technological innovations and promote intermodal and intramodal competition.

DATES: Comments are due on or before February 16, 1988 and reply comments are due on March 2, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jodi Cooper, International Facilities Division, Common Carrier Bureau, (202) 632-3214.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in Common Carrier Docket 79-184, FCC 88-15, adopted January 14, 1988, and released January 15, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. The Commission initiated this proceeding on April 10, 1987, (52 FR 15986; May 1, 1987), with the release of a Fourth Notice of Inquiry (NOI), CC Docket No. 79-184. That NOI stated that the Commission sought to develop policies and guidelines for the construction and use of cable and satellite transmission facilities to meet demands for common carrier service in the North Atlantic Region during the 1991-2000 period. The Commission requested the United States International Service Carriers (USISCs)

and Comsat to submit planning data including traffic forecasts, available technological facilities options, service reliability information, cost information and alternative facilities plans which assume use of different facilities and vary the time of introduction of new facilities.

2. The service carriers submitted a single plan which calls for the introduction of a TAT-9 optical fiber cable in 1991, landing in the United States, Canada, the United Kingdom, France and Spain. The TAT-9 cable will employ 1.55 micron laser technology on two transatlantic fiber optic pairs, each operating at a speed of 565 Mb/s and will also utilize wet multiplex technology. The proposed cable will cost approximately \$400 million, plus \$5 million for land and buildings and \$48 million for interest during construction.

3. The service carriers argue the need to implement TAT-9 by October, 1991, on the basis of: (1) Their projections of increased demand in the North Atlantic Region, attributed in particular to anticipated growth of wideband digital services; (2) the need for compatible digital restoration capability for TAT-8; (3) providing digital connectivity with the MAT-2 and EMOS-1 cables, thereby extending the system's configuration into the Mediterranean Region; (4) improving media and route diversity to points served by the TAT-9 cable; and (5) promoting intramodal and intermodal competition between and among cable and satellite entities in the North Atlantic Region.

4. Comsat submitted three alternative plans which do not contemplate the need for additional cable facilities during the planning period. Comsat asserts that the cable and satellite facilities already authorized will be sufficient to carry all projected traffic in the North Atlantic at least into the mid-1990's. The plan differ only in the number of follow-on-satellites that will be launched when the INTELSAT V series reach the end of their useful lives. The number of satellites to be deployed varies from six under Plan 1 to five under Plan 2 and four under Plan 3.

5. In evaluation the alternative plans and reply comments submitted by the U.S. carriers and Comsat, the Commission applied the following criteria: demand flexibility, cost, service reliability, foreign correspondent acceptance, digital connectivity, furtherance of the Commission's pro-competitive policies, satisfaction of defense communications requirements and other relevant factors.

6. After evaluating the planning data submitted, the Commission tentatively concluded that introduction of a TAT-9

cable as early as 1991 would be in the public interest. Although adequate demand flexibility (i.e., the ability of a particular facility or combination of transmission facilities to accommodate unforecasted increases in demand) appears to be provided by existing and planned facilities for a substantial portion of the planning period, the Commission noted that some uncertainty exists as to whether the Department of Defense's (DoD) substantial circuit projections were included in the forecasts submitted by the service carriers. In addition, the service carriers note the importance of the unique capabilities of fiber optic technology in meeting a perceived demand for digital terrestrial services. The Commission invited further comment on DoD's circuit projections and the degree to which planned fiber optic cable facilities will be sufficient to meet the demand for digital terrestrial services.

7. Despite the uncertainty as to demand flexibility, the Commission relied on several other factors which justify introduction of a TAT-9 cable as early as 1991. Specifically, the Commission noted that introduction of the TAT-9 fiber optic cable will: (1) Provide restoration of the TAT-8 optical fiber cable and other facilities while increasing both media and path diversity; (2) provide digital connectivity with the MAT-2 and EMOS-1 cable systems, resulting in an integrated digital network between North America and the Mediterranean; (3) promote national security interests by satisfying the operational requirements of the Department of Defense in the Atlantic and Mediterranean Regions; (4) provide further technological innovations, thereby providing users with the widest range of technological alternatives to meet their specific service requirements; and (5) further enhance intermodal and intramodal competition between and among cable and satellite entities. The plan also has the approval of the carriers' foreign correspondents.

8. The Commission reached no tentative conclusion on the specific configuration for the TAT-9 cable, particularly with regard to the question of whether a Portugal landing point should be provided in addition to the other three European landing points. The Commission noted that there was insufficient information pertaining to INTELSAT follow-on-satellites to reach any tentative conclusion regarding the number, capacity and parameters of such satellites to be deployed. Finally, since the Commission did not reach any conclusions on circuit distribution

guidelines, that issue will be resolved in the context of the circuit distribution proceeding in CC Docket No. 87-67.

9. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified information collection requirements on the public. Implementation of any new or modified requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

10. Accordingly, pursuant to sections 4(i), 4(j), 214, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. section 154(i), 154(j), 214 and 403 (1976) and section 201(c) of the Communications Satellite Act of 1962, as amended, 47 U.S.C. section 721(c) (1976), it is ordered that a rulemaking is hereby *instituted* into the above described issues.

11. It is further ordered that American Telephone Telegraph Company, the Communications Satellite Corporation, FTC Communication, Inc., ITT World Communications, Inc., MCI International, Inc., RCA Global Communications, Inc., TRT Telecommunications Corporation, US Sprint Communications Company and Western Union Telegraph Company are made parties respondent to the rulemaking initiated herein.

12. It is further ordered, pursuant to applicable procedures set forth in §§ 1.411, 1.412, 1.415, 1.419 and 1.421 of the Commission's Rules and Regulations, 47 CFR 1.411, 1.412, 1.415, 1.419 and 1.421 (1986), that, all parties shall and other interested persons may file comments on the issues in this proceeding on or before February 16, 1988 and that reply comments will be due on or before March 2, 1988. Before final action is taken in this proceeding we shall consider all relevant and timely comments filed. In reaching a decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

13. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. See generally 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine

Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

14. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to the Commission's secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. Section 1.1206.

15. Pursuant to section 650(b) of the Regulatory Flexibility Act (Pub. L. 96-354), it is certified, That Sections 603 and 604 of that Act do not apply because these rule changes will not, if promulgated, have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603, 604, 605(b) (1976). In addition, the Regulatory Flexibility Act does not apply to this proceeding because that Act excludes from its application all proceedings such as this that involve "a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances thereof or to valuations, costs or accounting practices relating to such rates, wages, structures, prices, appliances, services, or allowances." 5 U.S.C. section 601(2).

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-1208 Filed 1-26-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224-200083.

Title: Orange County Navigation and Port District Terminal Agreement.

Parties:

Orange County Navigation and Port District.

Ryan-Walsh Gulf, Inc.

Synopsis: The proposed agreement provides that Ryan-Walsh Gulf, Inc. will provide freight handling services at the Port of Orange.

Agreement No: 244-200084.

Title: City of Los Angeles Settlement Agreement.

Parties:

City of Los Angeles (City).

Crowley Maritime Corporation.

Synopsis: The proposed settlement agreement provides that payment of the specified settlement amount releases Delta Steamship Company and Crowley Maritime Corporation from any claims by the City resulting from damages to the premises occupied by Delta at Berths 153-155 in the Port of Los Angeles pursuant to preferential Berth Assignment No. 77-10.

By Order of the Federal Maritime Commission.

Dated: January 21, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-1558 Filed 1-26-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-008650-014.

Title: Calcutta, East Coast of Indian and Bangladesh/U.S.A. Conference.

Parties:

Bangladesh Shipping Corporation
The Scindia Steam Navigation Co., Ltd.

The Shipping Corporation of India, Ltd.

Waterman Isthmian Line

Synopsis: The proposed amendment would increase the conference admittance fee from \$5,000 to \$25,000.

Agreement No.: 202-010637-028.

Title: North Europe-U.S. Atlantic Conference.

Parties:

Atlantic Container Line B.V.
Hapag-Lloyd AG
Sea-Land Service, Inc.
Nedlloyd Lijnen, B.V.
Gulf Container Line (GCL), B.V.
P&O Containers (TFL) Limited
Compagnie Generale Maritime (CGM)

Synopsis: The proposed amendment would permit the parties to use loyalty contracts in conformity with U.S. antitrust laws and would provide that no member may use such a contract except as agreed by the conference, whether by exercise of independent action or otherwise. The amendment will not be implemented until September 1, 1988. An earlier filing by the parties to effect this action was withdrawn.

Agreement No.: 202-010636-031.

Title: U.S. Atlantic-North Europe Conference.

Parties:

Atlantic Container Line, B.V.
Dart-ML Limited
Hapag-Lloyd AG
Sea-Land Service, Inc.
Gulf Container Line (GCL), B.V.
P&O Containers (TFL) Limited

Compagnie Generale Maritime (CGM)
Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendment would permit the parties to use loyalty contracts in conformity with U.S. antitrust laws and would provide that no member may use such a contract except as agreed by the conference, whether by exercise of independent action or otherwise. The amendment will not be implemented until September 1, 1988. An earlier filing by the parties to effect this action was withdrawn.

Agreements No.: (1) 202-010270-026;
(2) 202-010656-026.

Titles: (1) Gulf-European Freight Association; (2) North Europe-U.S. Gulf Freight Association.

Parties (1) and (2):

Compagnie Generale Maritime (CGM)
Lykes Bros. Steamship Co., Inc.
Gulf Container Line (GCL), B.V.
Sea-Land Service, Inc.
Hapag-Lloyd AG
P&O Containers (TFL) Limited
Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendments would permit the parties to use loyalty contracts in conformity with U.S. antitrust laws and would provide that no member may use such a contract except as agreed by the associations, whether by exercise of independent action or otherwise. The amendments will not be implemented until the parties give their unanimous consent and the agreements are further revised to reflect their actions. Previous filings by the parties to effect this action were withdrawn.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: January 22, 1988.

[FR Doc. 88-1623 Filed 1-26-88; 8:45 am]

BILLING CODE 6730-01-M

[Fact Finding Investigation No. 17]**Rates, Charges and Services Provided at Marine Terminal Facilities**

The hearing scheduled for 9:00 a.m., February 9, 1988 in this proceeding will take place in the multimedia room at the Naval Reserve Readiness Center, 1902 Old Spanish Trail, Houston, Texas. The format for this hearing and the issues to be addressed are the same as previously announced.

A local point of contact for those desiring to participate in the Houston

hearing is FMC District Director, Mr. Donald Butler at (713) 229-2841.

Thomas F. Moakley,

Commissioner.

January 21, 1988.

[FR Doc. 88-1624 Filed 1-26-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM**CNB Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1832(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 18, 1988.

A. Federal Reserve Bank of Chicago
(David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. **CNB Bancorp, Inc.**, Chicago, Illinois; to acquire 100 percent of the voting shares of Potomac Bancorp, Inc., Springfield, Illinois, and thereby indirectly acquire Goodwine State Bank, Potomac, Illinois.

2. **First Wisconsin Corporation**, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Sahara Bancorp, Inc., New Brighton, Minnesota, and thereby indirectly acquire First State Bank of New Brighton, New Brighton, Minnesota.

B. Federal Reserve Bank of St. Louis
(Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Liberty National Bancorp, Inc.*, Louisville, Kentucky; to acquire 100 percent of the voting shares of The Bank of Elizabethtown, Inc., Elizabethtown, Kentucky.

2. *Union Planters Corporation*, Memphis, Tennessee; to acquire at least 90 percent of the voting shares of CBC Bancorp, Inc., Cookeville, Tennessee, and thereby indirectly acquire Citizens Bank, Cookeville, Tennessee.

C. *Federal Reserve Bank of Kansas City* (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First National Fairbury Corporation*, Fairbury, Nebraska; to acquire 100 percent of the voting shares of DeWitt State Bank, DeWitt, Nebraska, which engages in the sale of general insurance in a town of less than 5,000.

Board of Governors of the Federal Reserve System, January 21, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1597 Filed 1-26-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 11, 1988.

A. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Claudine Williams*, Las Vegas, Nevada; to acquire 15.91 percent of the voting shares of American Bancorp of Nevada, Las Vegas, Nevada, and thereby indirectly acquire American Bank of Commerce, Las Vegas, Nevada.

Board of Governors of the Federal Reserve System, January 21, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1598 Filed 1-26-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of the Vaccines and Related Biological Products Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on December 31, 1989, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: January 19, 1988.

Ronald G. Chesebrough,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-1564 Filed 1-26-88; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Microbiology Devices Panel

Date, time, and place. February 8, 1988, 9 a.m., Hubert H. Humphrey Bldg., Rm. 503A-529A, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 22, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will have a general discussion of Over-the-Counter (OTC) Group A Streptococci detection devices. The second item is a discussion of a premarket approval (PMA) for hepatitis B anti-core. The third item is a discussion of a PMA for rapid fluorogenic MIC antimicrobial susceptibility panels.

Obstetrics-Gynecology Devices Panel

Date, time, and place. February 24, 1988, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; Colin M. Pollard, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 12, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the

approximate time required to make their comments.

Open committee discussion. The Panel will discuss a PMA for a contraceptive cervical cap and provide FDA with its recommendation.

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. February 25 and 26, 1988, 9 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, February 25, 1988, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; February 26, 1988, 9 a.m. to 12 m.; John R. Short, Center for Drug Evaluation and Research (HFN-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3510.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in endocrine and metabolic disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contract person.

Open committee discussion. The committee will discuss: (1) The approvability of Eulexin (flutamide) as an adjuvant treatment of metastatic prostate on February 25, 1988, and (2) the approvability of Transdermal Therapeutic System (testosterone) for treatment of hypogonadism on February 26, 1988.

Dental Devices Panel

Date, time, and place. February 26, 1988, 9 a.m., Hubert H. Humphrey Bldg., Rm. 703-727A, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. open committee discussion, 10 a.m. to 4 p.m.; to 10 a.m.; Gregory Singleton, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in

writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 1, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss an enzyme test kit designed to measure neutral proteolytic enzyme activity in gingival fluid, and thus aid in the diagnosis of periodontal disease.

Hematology and Pathology Devices Panel

Date, time, and place. February 29, 1988, 12 m., Conference Rm. F, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. This meeting will take the form of a telephone conference call. A speaker phone will be provided in the conference room to allow public participation in the open session of the meeting. Open public hearing, 12 m. to 1 p.m., unless public participation does not last that long; open committee discussion, 1 p.m. to 2 p.m.; Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-440) Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 15, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss one petition for reclassification of automated heparin analyzers.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public

hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857,

approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: January 21, 1988.

Ronald G. Chesebrough,

Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 88-1633 Filed 1-26-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

(BERC-274-CN)

Medicare Program; List of Covered Surgical Procedures for Ambulatory Surgical Centers

AGENCY: Health Care Financing
Administration (HCFA), HHS.

ACTION: Correction of final notice.

SUMMARY: This document corrects technical errors that appeared in the final notice that was published in the Federal Register on April 21, 1987 (52 FR 13176) on additions and revisions to the current list of surgical procedures for ambulatory surgical centers (ASCs).

FOR FURTHER INFORMATION, CONTACT: Jacqueline M. Greene, (301)-597-2989.

SUPPLEMENTARY INFORMATION: In Federal Register document 87-8930, beginning on page 13176 in the issue of April 21, 1987, make the following corrections:

1. The following code is deleted from the list of additions to the covered ASC services. The code was listed twice and is correctly listed as an excluded procedure in section IV. B of the notice (52 FR 13176):

Page No.	Code	Payment group	Description
13196	31528	2	Respiratory System, Larynx, Endoscopy, Laryngoscopy direct; with dilatation, initial.

2. The following procedures were inadvertently omitted from the Federal Register notice, but are currently being

paid for by Medicare. The codes are inserted, in code number order, in the list of additions to covered ASC

services. All codes except 40652 appear in the most recent Medicare Carriers Manual instruction.

Page No.	Code	Payment Group	Description
13194	28222	3	Musculoskeletal System, Foot, Repair, Revision, or Reconstruction, Tenolysis, flexor, multiple (through same incision).
13194	28225	3	Musculoskeletal System, Foot, Repair, Revision, or Reconstruction, Tenolysis, extensor, single.
13194	28226	3	Musculoskeletal System, Foot, Repair, Revision, or Reconstruction, Tenolysis, extensor, multiple (through same incision).
13197	40652	3	Digestive System, Lips, Repair (Cheiloplasty), Repair lip, full thickness; up to half vertical height.
13197	41000	1	Digestive System, Tongue, Floor of Mouth, Incision, Intraoral incision and drainage of abscess, cyst, or hematoma of tongue or floor of mouth; lingual.
13197	41005	1	Digestive System, Tongue, Floor of Mouth, Incision, Intraoral incision and drainage of abscess, cyst, or hematoma of tongue or floor of mouth; sublingual, superficial.
13197	42000	1	Digestive System, Palate, Uvula, Incision, Drainage of abscess of palate, uvula.

3. On page 13193, the first column, revise code "2227552" to read "27552".

4. On page 13193, the first column, revise code "27666" to read "27566".

5. On page 13199, the first column, code 49303, revise the payment group to read "4".

(Sec. 1833(i)(1) of the Social Security Act (42 U.S.C. 1395(i)(1); 42 CFR 416.65))

(Catalog of Federal Domestic Assistance
Program No. 13.774, Medicare—

Supplementary Medical Insurance Program)

Dated: January 20, 1988.

James F. Trickett,

Deputy Assistant Secretary for
Administrative and Management Services.

[FR Doc. 88-1619 Filed 1-26-88; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

Animal Resources Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Animal Resources Review Committee, Division of Research Resources, March 3-4, 1988, National Institutes of Health, Building 31, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 4, 1988 from 10:00 a.m. to approximately 12:30 p.m. for a brief staff presentation on the current status of the Animal Resources Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set

forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meetings will be closed to the public on March 3, 1988 from approximately 1:00-5:30 p.m. and March 4, 1988, from 8:00 a.m. until approximately 10:00 for the review, discussion, and evaluation of individual grant applications submitted to the Animal Resources Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B13, Bethesda, Maryland

20892, (301) 496-5545, will provide a summary of the meeting and a roster of the committee members upon request. Dr. Arthur D. Schaerdel, Executive Secretary of the Animal Resources Review Committee, Division of Research Resources, National Institutes of Health, Building 31, Room 5B55, Bethesda, Maryland 20892, (301) 496-5175, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs No. 13.306, Laboratory Animal Sciences, National Institutes of Health)

Dated: January 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-1574 Filed 1-26-88; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Board of Scientific Counselors, Division of Etiology; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on February 25-26, 1988. On February 25 the meeting will be held in Building 31, C Wing, Conference Room 10 and on February 26 the meeting will be held in Building 31, C Wing, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 1 p.m. to recess on February 25 and from 9 a.m. to adjournment on February 26 for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 9 a.m. to approximately 12 p.m. on February 25 for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-6927) will furnish substantive program information.

Dated: January 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-1575 Filed 1-26-88; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute, Cancer Clinical Investigation Review Committee Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Clinical Investigation Review Committee, National Cancer Institute, March 28-29, 1988, at the Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

This meeting will be open to the public on March 28 from 8:30 a.m. to 9 a.m. for reports by the Executive Secretary and Chairman of the Cancer Clinical Investigation Review Committee. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 28 from approximately 9 a.m. until recess and on March 29 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications and cooperative agreements. These grant applications and cooperative agreements and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Mary Ann Sestili, Executive Secretary, Cancer Clinical Investigation Review Committee, National Cancer Institute, Westwood Building, Room 836, National Institutes of Health, Bethesda, Maryland 20892 (301/496-7481) will

provide substantive program information upon request.

Dated: January 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-1576 Filed 1-26-88; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Developmental Therapeutics Contracts Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, Linden Hill Hotel & Racquet Club, Forest Hill Conference Room, 5400 Pooks Hills Road, Bethesda, Maryland 20814.

This meeting will be open to the public on February 5 from 8 a.m. to 8:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 5, 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A-06, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892 (301-496-5708), will provide a summary of the meeting and a roster of the committee members.

Dr. Kendall G. Powers, Executive Secretary, Developmental Therapeutics Contracts Review Committee, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20892 (301-496-7575) will provide substantive program information, upon request.

Dated: January 19, 1988.

Betty J. Beveridge

Committee Management Officer, NIH.

[FR Doc. 88-1579 Filed 1-26-88; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Control Grant Review Committee, National Cancer Institute, on February 17-19, 1988, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on February 17 from 8 p.m. to 8:30 p.m., to review administrative details and other cancer control review issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sections 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 17 from approximately 8:30 p.m. to recess; on February 18 from 8 a.m. to recess; and again on February 19 from 8 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Carolyn Street, Executive Secretary, Cancer Control Grant Review Committee, National Cancer Institute, Westwood Building, Room 810, National Institutes of Health, Bethesda, Maryland 20892 (301/496-2378) will furnish substantive program information.

Dated: January 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-1578 Filed 1-26-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Review Committees; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for March 1988.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD,

and executive secretaries, for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1485, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the Executive Secretary indicated.

Name of Committee: Maternal and Child Health Research Committee.

Executive Secretary: Dr. Scott Andres, Room 6C08, Landow Building, Telephone: 301, 496-1485.

Date of Meeting: March 8-9, 1988.

Place of Meeting: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland.

Open: March 8, 1988, 9:00 a.m.-10:00 a.m.

Closed:

March 8, 1988, 10:00 a.m.-5:00 p.m.

March 9, 1988, 9:00 a.m.-adjournment.

Name of Committee: Mental Retardation Research Committee.

Executive Secretary: Dr. Susan Streufert, Room 6C08, Landow Building, Telephone: 301, 496-1696.

Date of Meeting: March 9-11, 1988.

Place of Meeting: Building 31, Conference Room 9, National Institutes of Health, Bethesda, Maryland.

Open: March 8, 1988, 9:00 a.m.-10:00 a.m.

Closed:

March 9, 1988, 10:00 a.m.-5:00 p.m.

March 10, 1988, 9:00 a.m.-5:00 p.m.

March 11, 1988, 9:00 a.m.-adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research and No 13.865, Research for Mothers and Children, National Institutes of Health)

Dated: January 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-1580 Filed 1-26-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the National Institute on Aging.

These meetings will be open to the public to discuss administrative details for approximately one-half hour at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Building 31, Room 5C05, National Institute of Health, Bethesda, Maryland, 20892, (301/496-9322), will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee A

Executive Secretary: Dr. Walter Spieth, Dr. Maria Mannarino, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496-9666.

Dates of Meeting: March 9-11, 1988.

Place of Meeting: National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: March 9, 8:30-9:00 a.m.

Closed: March 9, 9:00 a.m. to recess

March 10-11, 8:30 a.m. to adjournment.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee B

Executive Secretary: Dr. David Lavrin, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496-9666.

Dates of Meeting: March 15-16, 1988.

Place of Meeting: National Institutes of Health, Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: March 15, 8:30 to 9:00 a.m.

Closed: March 15, 9:00 a.m. to recess.

March 16, 8:30 a.m. to adjournment.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee C.

Executive Secretary: Dr. James Harwood, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496-9666.

Dates of Meeting: March 18, 1988.

Place of Meeting: Omni Hotel, 101 W. Fayette Street, Baltimore, Maryland 21201.

Open: March 18, 8:30-9:00 a.m.

Closed: March 18, 9:00 a.m. to adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: January 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-1585 Filed 1-26-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases Advisory Council and Its Subcommittees; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on February 10 and 11, 1988, Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public February 10 from 8:30 a.m. to 12 noon and again on February 11 from 1 p.m. to adjournment to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the subcommittee and full Council meetings will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on February 10 from 1 p.m. to recess: Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urologic and Hematologic Diseases. The full Council meeting will be closed on February 11 from 8:30 a.m. to approximately 12 noon.

These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Westwood Building, Room 657, Bethesda, Maryland 20892, (301) 496-7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, Room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-6917.

(Catalog of Federal Domestic Assistance Program No. 13.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: January 19, 1988.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 88-1581 Filed 1-26-88; 8:45 am]

BILLING CODE 4140-01-M

Subcommittee B of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of Subcommittee B of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), on February 24-25, 1988, at the Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814. This meeting will be open to the public on February 24 from 7:30 p.m. to 8:30 p.m. to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 24 from 8:30 p.m. to adjournment and February 25 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Edith Wynkoop, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health,

Building 31, Room 9A19, Bethesda, Maryland 20892, 301-496-6917, will provide a summary of the meeting and a roster of the committee members upon request.

Dated: January 19, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88-1584 Filed 1-26-88; 8:45 am]

BILLING CODE 4140-01-M

Subcommittee C of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of Subcommittee C of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), on February 22-23, 1988, at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852. This meeting will be open to the public on February 22 from 7:30 p.m. to 8:30 p.m. to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 22 from 8:30 p.m. to adjournment and February 23 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Edith Wynkoop, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, Room 9A19, Bethesda, Maryland 20892, 301-496-6917, will provide a summary of the meeting and a roster of the committee members upon request.

Dated: January 19, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88-1583 Filed 1-26-88; 8:45 am]

BILLING CODE 4140-01-M

Subcommittee D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of Subcommittee D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), on February 16, 1988, at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814. This meeting will be open to the public on February 16 from 1:30 p.m. to 2:30 p.m. to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 16 from 2:30 p.m. to adjournment for the review, discussion and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Edith Wynkoop, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, Room 9A19, Bethesda, Maryland 20892, 301-496-6917, will provide a summary of the meeting and a roster of the committee members upon request.

Dated: January 19, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88-1582 Filed 1-26-88; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meetings of the Biomedical Library Review Committee and the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the

Biomedical Library Review Committee on March 9-10, 1988, convening each day at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland, and the meeting of the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications on March 8 from 3 p.m. to 4 p.m. in the 5th-Floor Conference Room of the Lister Hill Center Building.

The meeting on March 9 will be open to the public from 8:30 to 11:30 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provision set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92-463, the regular meeting and the subcommittee meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications as follows: The regular meeting on March 9 from 11:30 a.m. to 5 p.m., and on March 10, from 8:30 a.m. to adjournment; and the subcommittee meeting on March 8 from 3 to 4 p.m. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301-496-4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: January 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-1586 Filed 1-26-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Compliance With Section 5 of Pub. L. 100-95, the Wampanoag Tribal Council of Gay Head, Inc., Indian Claims Settlement Act of 1987

January 22, 1988.

AGENCY: Eastern Area Office, Bureau of Indian Affairs, Interior.

ACTION: Notice of compliance of Section 5 of Pub. L. 100-95.

SUMMARY: This notice is published in the exercise of authority delegated by the Secretary of the Interior of the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Section 5 of the Act states that no action shall be taken by the Secretary regarding the purchase and transfer of settlement lands until:

(1) the Commonwealth of Massachusetts has enacted legislation which provides that—

(a) the Town of Gay Head, Massachusetts, is authorized to convey to the Secretary to be held in trust for the Wampanoag Tribal Council of Gay Head Inc., the public settlement lands and the Cook lands subject to the conditions and limitations set forth in the Settlement Agreement; and

(b) the Wampanoag Tribal Council of Gay Head, Inc., shall have the authority, after consultation with appropriate State and local officials, to regulate any hunting by Indians on the settlement lands that is conducted by means other than firearms or crossbows to the extent provided in, and subject to the conditions and limitations set forth in, the Settlement Agreement.

(2) the Wampanoag Tribal Council of Gay Head, Inc., has submitted to the Secretary and executed waiver or waivers of the claims covered by the Settlement Agreement all claims extinguished by this Act, and all claims arising because of the approval of transfers and extinguishment of titles and claims under this Act, and

(3) the Town of Gay Head, Massachusetts, has authorized the conveyance of the public settlement lands and the Cook Lands to the Secretary in trust for the Wampanoag Tribal Council of Gay Head, Inc.

Notice is hereby given that the Secretary of the Interior has determined that the requirements of section 5 of Pub. L. 100-95, an Act "To settle Indian land claims in the Town of Gay Head, Massachusetts, and for other purposes" have been met.

FOR FURTHER INFORMATION CONTACT:

B.D. Ott, Area Director, Eastern Area Office, BIA-EAO-MS-711 Broyhill, 1951 Constitution Avenue NW., Washington, DC 20245, telephone number: (703) 235-2571.

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88-1604 Filed 1-26-88; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[INT DES-88-2, AZ-020-4410-08]

Phoenix Draft Resource Management Plan, Environmental Impact Statement, Phoenix District, AZ; Availability and Public Hearings

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the Draft Resource Management Plan/Environmental Impact Statement and public hearings.

SUMMARY: Notice is hereby given of the availability of the draft Phoenix Resource Management Plan/Environmental Impact Statement (RMP/EIS). The draft RMP/EIS addresses land use on 911,000 acres of public land in eight Arizona counties. These Arizona counties include Apache, Navajo, Yavapai, Maricopa, Pima, Pinal, Gila and Santa Cruz.

SUPPLEMENTARY INFORMATION: The issues addressed in the RMP/EIS are: land tenure adjustment, utility corridors and communication sites, areas of critical environmental concern (ACECs), off-road vehicle designations, recreation management and land classifications.

The RMP/EIS identifies and analyzes four alternative management strategies for the planning area's 911,000 acres of public land and 2.1 million acres of federal subsurface estate.

Under the preferred alternative, the BLM would establish seven resource conservation areas (RCAs) where 450,000 acres of public land would be retained and intensively managed and 470,000 acres of state and private land would be considered for acquisition. Also under this alternative, 380,000 acres would be made available for disposal through exchange and 45,000 acres for disposal through exchange or sale.

The preferred alternative also identifies seven utility corridors and five communication sites. The corridors represent the BLM's preferred utility corridor routings across the planning area's public land.

The preferred alternative identifies six areas of critical environmental concern

(ACECs) encompassing 9,970 acres. An additional ACEC encompassing 9,400 acres is recommended and would be designated upon the BLM's acquisition of state land within the ACEC boundaries.

The proposed ACEC's and resource use limitations are:

(1) Baboquivari Peak, 2,070 federal acres—close to motorized vehicles, initiate a mineral withdrawal, prohibit land use authorizations and surface occupancy for oil and gas lease development.

(2) Waterman Mountains, 1,960 federal acres—limit motorized vehicles to existing roads and trails, limit land use authorizations, initiate a mineral withdrawal, prohibit surface occupancy for oil and gas lease development.

(3) White Canyon, 1,920 federal acres—close White and Walnut canyons to motorized vehicles, prohibit land use authorizations, prohibit surface occupancy for oil and gas lease development.

(4) Larry Canyon, 80 federal acres—close to motorized vehicles, prohibit land use authorizations, initiate a mineral withdrawal, prohibit domestic livestock grazing, prohibit surface occupancy for oil and gas lease development.

(5) Tanner Wash, 640 federal acres—close 30 acres to motorized vehicles, prohibit land use authorizations, initiate a mineral withdrawal, prohibit surface occupancy for oil and gas lease development.

(6) Appleton-Whittell, 2,341 federal acres—close to motorized vehicles and land use authorizations, prohibit surface occupancy for oil and gas lease development.

(7) Perry Mesa, 960 federal acres—designate as an ACEC upon the acquisition of 8,480 state acres, limit motorized vehicle to existing roads and trails.

The preferred alternative recommends the closure of 11,760 acres to vehicular travel. On the planning area's remaining public land, vehicular travel would be limited to existing roads and trails.

The preferred alternative provides a framework for managing the area's recreation resources through the designation of two special recreation management areas, five cooperative recreation management areas and five recreation and public purpose areas. In addition, establishing seven resource conservation areas would provide extensive open space recreation opportunities throughout the planning area.

The planning area is currently encumbered by five multiple use classifications. Under the preferred

alternative, these classifications would be terminated.

The RMP/EIS considers three other alternatives in addition to Alternative B, the preferred alternative. These are: (1) Alternative A, No Action, in which the BLM would maintain all public land in its current status with no change in management, (2) Alternative C, which calls for the establishment of six resource conservation areas which are boundary adjustments to those identified in the preferred alternative and (3) Alternative D, which calls for the total disposal through exchange or sale of all public land.

DATES AND ADDRESSES: The public is invited to comment on the draft RMP/EIS. The public comment period will end Friday, April 29, 1988. Written comments should be mailed to the Bureau of Land Management, Arthur E. Tower, Phoenix Resources Area Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Comments must be postmarked by April 29, 1988 to be considered in the development of the final EIS.

Two formal public hearings have been scheduled to receive oral comments on the draft RMP/EIS. They will be held at Tucson, Arizona on February 23, 1988 at 7:00 p.m. at the Tucson Convention Center, Coconino Room, 260 South Church Avenue, and in Phoenix, Arizona on February 25, 1988 at 7:00 p.m. at the Embassy Suites Hotel, Lavista Room, 3210 Northwest Grand Avenue.

FOR FURTHER INFORMATION CONTACT:

Tim Sanders, team leader, or Don Ducote, assistant team leader, Bureau of Land Management, Phoenix Resource Area, telephone commercial (602) 863-4464, FTS 764-0501.

Filed with Environmental Protection Agency January 22, 1988.

Herman Kast,

Associate District Manager.

Date: January 21, 1988.

[FR Doc. 88-1603 Filed 1-26-88; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service**Alaska Land Bank Agreements**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Fish and Wildlife Service executed agreements to include 98 percent of the land conveyance entitlement for Alaska Peninsula Corporation and 100 percent of the land conveyance entitlements for Bay View, Incorporated, Becharof Corporation, and Manokotak Natives,

Limited, in the Alaska Land Bank Program during 1987. This notice is issued pursuant to section 907 of the Alaska National Interest Lands Conservation Act, Pub. L. 96-487, Stat. 2371.

FOR FURTHER INFORMATION CONTACT:

William H. Mattice, Deputy, Division of Realty, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, (907) 786-3379.

Date: January 19, 1988.

Walter O. Stieglitz,
Regional Director.

[FR Doc. 88-1636 Filed 1-26-88; 8:45 am]

BILLING CODE 4310-AN-M

Preparation of an Environmental Assessment on a Proposed Experimental Release and Recapture of Andean Condors (*Vultur gryphus*) in Ventura County, CA; Research Proposal and Meeting

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of intent and meeting.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to release 16 to 20 female captive-born Andean condors (3 to 9 months of age) within the recent historical range of the California condor (*Gymnogyps californianus*) in Ventura County, California. After 2 to 3 years, the birds would be recaptured. One proposed release site is within the Service's Hopper Mountain National Wildlife Refuge; a second proposed release site is within the Sespe Condor Sanctuary, Los Padres National Forest. The Service intends to prepare an Environmental Assessment (EA).

It is anticipated that the document will be a joint Federal EA/State of California Environmental Impact Report with the U.S. Forest Service serving as a Federal Cooperating Agency. This notice describes the proposed action, tentative issues, concerns, and opportunities, and outlines the scoping process that will be employed in preparing the EA. This notice also identifies the Service officials to whom questions and comments concerning the proposed action and the EA may be directed.

DATES: A public scoping meeting will be held at the following location on the date and time indicated: Fillmore High School Cafeteria, 555 Central Avenue, Fillmore, California; Thursday, February 25, 1988, at 7:30 p.m.

ADDRESSES: U.S. Fish and Wildlife Service, Ventura Field Office, 2291-A Portola Road, Ventura, California 93003, and U.S. Fish and Wildlife Service, Regional Office, 500 NE. Multnomah

Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT:

Joseph J. Dowhan at the Ventura Field Office regarding the proposed experimental release; telephone 805/644-1766 or FTS 983-6039. Written comments related to the EA should be transmitted to Jackie Campbell in the Regional Office; telephone 503/231-6150 or FTS 429-6150. Persons desiring to participate in the facilitated scoping meeting should contact the Field Office as soon as possible. Interested persons are encouraged to attend the meeting to identify and discuss major issues, concerns, and opportunities that should be addressed in the EA. Written comments may also be submitted. The end of the public comment period will be March 11, 1988. Interested persons are reminded that the primary purpose of the scoping process is to identify, rather than debate, the significant issues related to the proposed action. Additional public meetings will be held, if warranted, on later dates in order to provide opportunities to comment on the draft EA.

SUPPLEMENTARY INFORMATION:

Background

Andean condors (captive-bred in United States zoos and research facilities) have for many years served as an important research surrogate species for captive and field studies of the California condor, including radio-telemetry, trapping methods, and various husbandry techniques. In view of the fact that captive-born Andean condors have also been used in experimental release projects in South America, it is proposed that they would also be an ideal surrogate on which to test both potential sites of future California condor releases as well as release techniques. The use of captive-born Andean condors would be instrumental in assessing mortality and other risks associated with proposed release sites and in determining the most effective techniques for releasing birds to the wild. Moreover, the hands-on experience gained by biologists involved in Andean condor releases would be extremely valuable in later releases of California condor and would, in turn, serve to minimize losses of the already severely depleted California condor population.

These purposes are consistent with and directly support the principal recovery objective of releasing captive California condors to the wild at the earliest biologically feasible time and reestablishing one or more free-flying, self-maintaining wild populations of

California condors within the species' recent historical range.

The implementation of the research proposal would involve the construction of 2 elevated release/hacking platforms and from 8 to 10 feeding platforms. The young Andean condors would feed on carcasses provided by the research team. Their activities would be monitored through observations and radio-telemetry. Research personnel would be on-site, 24 hours a day, for the entire duration of the project. A greater flexibility of recapture techniques would be available to the team than was used in the capture of the California condors.

A tentative list of issues and concerns that will be addressed in the EA is as follows:

1. potential effect of the release of an exotic species on the natural ecosystem;
2. potential effect of the release of Andean condors on native species, especially federally- or State-listed birds.
3. effectiveness of recapture methodology; and
4. need for surveys to assure no adverse effect to cultural resources from proposed minor surface disturbance.

Dated: January 21, 1988.

Holf L. Wallenstrom,
Regional Director.

[FR Doc. 88-1605 Filed 1-26-88; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-268]

Certain High Intensity Retroreflective Sheeting

Notice is hereby given that the prehearing conference in this matter is presently scheduled to commence at 9:30 a.m. on February 1, 1988, in Hearing Room A Room 100 at the new International Trade Commission Building at 500 E Street SW., Washington, DC, and the hearing will commence immediately thereafter. This date is subject to change through order of the administrative law judge; non-parties wishing to attend should contact Mr. McKie at 202-252-1701 as to whether there have been any changes made in this schedule by the judge.

The Secretary shall publish this notice in the Federal Register.

Paul J. Luckern,
Administrative Law Judge.

Issued: January 20, 1988.

[FR Doc. 88-1667 Filed 1-26-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-266]

Certain Recloseable Plastic Bags and Tubing; Commission Determination Not To Review Initial Determination Finding Respondents In Default

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of initial determination (ID) finding three respondents in default.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ's) ID finding respondents C.A.G. Enterprise Pte. Ltd. (C.A.G.), Lim Tai Chin Pahathet Co. Ltd. (Lim Tai), and Rol-Pak Sdn Bhd (Rol-Pak) in default in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT:

Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1102.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

On November 19, 1987, the ALJ ordered (Order No. 46) respondents C.A.G., Lim Tai, and Rol-Pak to show cause why each should not be held in default. No responses were received.

On December 9, 1987, the ALJ issued an ID (Order No. 56) finding respondents C.A.G., Rol-Pak, and Lim Tai in default pursuant to Commission rule 210.25 (19 CFR 210.25). No petitions for review of the ID were received nor were any Government agency comments received.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1802. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Kenneth R. Mason,
Secretary.

Issued: January 14, 1988.

[FR Doc. 88-1668 Filed 1-26-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-279]

Certain Plastic Light Duty Screw Anchors; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on December 11, 1987, under section 337 of the Tariff Act of 1930, (19 U.S.C. 1337), on behalf of Mechanical Plastics Corp., Castleton Street, Pleasantville, New York 10570. The complaint was supplemented on December 28, 1987, and December 29, 1987. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation into the United States of certain plastic light duty screw anchors, and in their sale, by reason of alleged (1) direct and induced infringement of claim 1 of U.S. Letters Patent 3,651,734, (2) infringement of U.S. Registered Trademark No. 928,123, (3) infringement of U.S. Registered Trademark No. 1,248,999, (4) palming off, and (5) false designation of origin. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation, conduct temporary relief proceedings, and issue a temporary exclusion order prohibiting importation of the articles in question into the United States, and temporary cease and desist orders. After a full investigation, the complainant requests that the Commission issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT:

T. Spence Chubb, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1575.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.12).

Scope of Investigation

Having considered the supplemented complaint, the U.S. International Trade Commission, on January 6, 1988, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine

whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain plastic light duty screw anchors, or in their sale, by reason of alleged (1) direct or induced infringement of claim 1 of U.S. Letters Patent 3,651,734, (2) infringement of U.S. Registered Trademark No. 928,123, (3) infringement of U.S. Registered Trademark No. 1,248,999, (4) palming off, or (5) false designation of origin, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) Pursuant to § 210.24(e) of the Commission's rules, the motion for temporary relief under subsections (e) and (f) of section 337 of the Tariff Act of 1930, which was filed with the complaint, shall be forwarded to the presiding administrative law judge for an initial determination pursuant to § 210.53(b) of the rules;

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Mechanical Plastics Corp., Castleton Street Pleasantville, New York 10570.

(b) The respondents are the following individual and companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Saul Rubinstein, 21 Sparks Street, Melville, New York 11747;

HWally Products Corp., Ltd., P.O. Box 1743, Kaohsiung, Taiwan

Taiwan Hawk Industrial, Ltd., P.O. Box 3514, Taipei, Taiwan

Linkwell Industry Co., Ltd., P.O. Box 58743, Taipei, Taiwan

(c) T. Spence Chubb, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Room 401P, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 210.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint.

Responses to the motion for temporary relief may be submitted by the named respondents in accordance with § 210.24(e)(3) of the Commission's rules. Any such responses must be filed within 20 days after service of the motion. Extensions of time for submitting responses to the complaint and/or the motion for temporary relief will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Kenneth R. Mason,
Secretary.

Issued: January 12, 1988.

Note.—Effective January 10, 1988, the Office of the Secretary of the U.S. International Trade Commission will be located at 500 E Street SW., Room 112, Washington, DC 20436, telephone 202-252-1802 and the Commission's TDD terminal will be 202-252-1810.

[FR Doc. 88-1669 Filed 1-26-88; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-277]

**Certain Marine Automatic Pilots;
Notice of Change of The Commission
Investigate Attorney**

Before John J. Mathias, Administrative Law Judge.

Notice is hereby given that, as of this date, David A. Guth, Esq., of the Office of Unfair Import Investigations will be the Commission Investigative Attorney in the above-cited investigation instead of Ralph A. Mittelberger, Esq.

The Secretary is requested to publish this Notice in the Federal Register.

Respectfully submitted, Arthur Wineburg,
Director, Office of Unfair Import
Investigations, 500 E Street SW., Washington,
DC 20436.

Dated: January 11, 1988.

[FR Doc. 88-1670 Filed 1-26-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-271]

**Certain Buoyant Metallic Balloons;
Commission Decision Not To Review
Initial Determination Granting
Complainants' Motion To Terminate
the Investigation With Prejudice**

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of initial determination granting complainants' motion to terminate the above-captioned investigation with prejudice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 13) granting a motion of complaints Continental American Corporation and Gerald L. Hurst to terminate the investigation with prejudice.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1088.

SUPPLEMENTARY INFORMATION: On June 26, 1987, Continental American Corporation and Gerald L. Hurst filed a complaint with the Commission pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) alleging unfair acts in the importation and sale of certain buoyant metallic balloons. The Commission issued a notice of investigation on July 28, 1987, naming as respondents Pacific Balloon Manufacturing Co., Bernhardt-Case, Inc., and You Chang Balloon Manufacturing Co. Subsequently, CTI Industries Corporation was permitted to intervene as a fully participating respondent.

On December 1, 1987, complainants filed a motion to terminate the investigation with prejudice. All parties supported the motion. The ALJ issued his ID granting the motion on December 10, 1987. No petitions for review nor comments from other government agencies were received.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in

the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1802.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Kenneth R. Mason,
Secretary.

Issued: January 12, 1988.

[FR Doc. 88-1671 Filed 1-26-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-280]

**Certain High Geometric Surface Area
Catalysts and Components Thereof;
Investigation**

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 24, 1987, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of United Catalysts Inc., 1800 Meidinger Tower, Louisville, Kentucky 40202. A supplement and amended and supplemental exhibits were filed on January 12 and January 13, 1988. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation into the United States of certain high geometric surface area catalysts and components thereof, and in their sale, by reason of alleged direct, contributory, and induced infringement of claims 1, 3, 4, and 6 of U.S. Letters Patent Re. 32,044. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Cheri M. Taylor, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1568.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on January 21, 1988, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain high geometric surface area catalysts and components thereof, or in their sale, by reason of alleged direct, contributory, or induced infringement of claims 1, 3, 4, or 6 of U.S. Letters Patent Re. 32,044, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—United Catalysts Inc., 1800 Meidinger Tower, Louisville, Kentucky 40202.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Haldor Topsoe Inc., P.O. Box 58767, 17629 El Camino Road, Suite 302, Houston, Texas 77058

Haldor Topsoe, A/S., P.O. Box 213, Nymollerej 55, DK 2800 Lyngby, Copenhagen, Denmark

(c) Cheri M. Taylor, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street S.W., Room 401J, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the

right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission,
Kenneth R. Mason,
Secretary.

Issued: January 21, 1988.
[FR Doc. 88-1672 Filed 1-26-88; 8:45 am]
BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31179]

The Benton Central Railroad Co.; Acquisition and Operation Exemption; Demeter, Inc.

The Benton Central Railroad Company (BCR), has filed a notice of exemption to acquire by purchase and operate 7.24 miles of rail line owned as industrial siding by Demeter, Inc., a regional grain company.¹ The property extends from milepost 192.44 at Templeton, IN, to milepost 199.68, at Swanington, IN.² The transaction is expected to be consummated January 19, 1988.

Any comments must be filed with the Commission and served on Carl M. Miller, Miller & Miller, P.O. Box 246, 407 Broadway, New Haven, IN 46774-0246.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a

¹ 49 U.S.C. 10907 exempts from Commission authority under 49 U.S.C. 10901 the acquisition of industrial track. Consequently, this notice of exemption will only be considered as pertaining to operation of the subject track as a line of railroad.

² Consolidated Rail Corporation holds an operating easement over the northernmost .18 mile line of track.

petition to revoke will not automatically stay the transaction.

Decided: January 14, 1988.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 88-1480 Filed 1-26-88; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Youngstown Thermal Corp.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. Youngstown Thermal Corp.*, Civil Action No. C83-808-Y was lodged with the United States District Court for the Northern District of Ohio. The complaint filed by the United States alleged that Youngstown Thermal Corp. ("Youngstown Thermal") has violated section 113 of the Clean Air Act, 42 U.S.C. 7413, by failing to comply with applicable provisions of the Ohio State Implementation Plan ("SIP") regulating the particulate content and opacity of emissions to the ambient air.

The proposed Decree establishes deadlines for installing air pollution control equipment and for achieving compliance with Ohio Administrative Code Rules 3745-17-07 and 3745-17-10 (part of the Ohio particulate SIP) by reducing the particulate content and the opacity of emissions from defendant's facility. The proposed Decree also includes a requirement for annual testing of particulate emissions from defendant's facility as well as a requirement for installation and operation of continuous opacity monitors. Particulate test results and opacity monitoring data are required to be submitted to the United States Environmental Protection Agency.

The proposed Decree provides that defendant's future coal procurement contracts must include specified limits on the permissible ash and fines content of the coal supplied to defendant. Further, the proposed Decree requires defendant to obtain a weekly coal analysis indicating the percent ash, ash fusion temperature, heating value, percent moisture and percent sulfur of the coal used by defendant.

In addition, the proposed Consent Decree requires defendant to pay a civil penalty of \$110,000.

The proposed Consent Decree may be examined at the office of the United States Attorney, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114 and

at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Lands and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of \$2.50 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-1818 Filed 1-26-88; 10:38 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Importation of Controlled Substances Registration; Arenol Chemical Corp.

By notice dated July 22, 1987, and published in the *Federal Register* on July 28, 1987; (52 FR 28201), Arenol Chemical Corporation of New Jersey, a New Application, 40-33 23rd Street, Long Island City, New York 11101, made application to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: January 19, 1988.

[FR Doc. 88-1593 Filed 1-26-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances Registration; Du Pont Pharmaceuticals

By notice dated September 16, 1987, and published in the *Federal Register* on September 24, 1987; (52 FR 35973), Du Pont Pharmaceuticals, 1000 Stewart Avenue, Garden City, New York 11530,

made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

No comments or objections have been received. Therefore, pursuant to section 303 of Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: January 20, 1988.

[FR Doc. 88-1594 Filed 1-26-88; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances Registration; Norac Company, Inc.

By notice dated August 3, 1987, and published in the *Federal Register* on August 7, 1987; (52 FR 29450), Norac Company, Inc., 405 South Motor Avenue, P.O. Box F, Azusa, California 91702, made application to the Drug Enforcement Administration to be registered as an importer of ibogaine (7260), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated January 19, 1988.

[FR Doc. 88-1595 Filed 1-26-88; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances Registration; Philadelphia Seed Co.

By Notice dated June 22, 1987, and published in the *Federal Register* on June 30, 1987, (52 FR 24353), Philadelphia

Seed Company, Division of Stanford Seed Company, Muddy Creek Road, Lancaster County, Denver, Pennsylvania 17517, made application to the Drug Enforcement Administration to be registered as an importer of marihuana (7360), a basic class of controlled substance listed in Schedule I. This application is exclusively for the importation of marihuana seed which will be rendered non-viable and used as bird seed.

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: January 19, 1988.

[FR Doc. 88-1596 Filed 1-26-88; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

January 13, 1988.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on February 11-12, 1988.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue NW., Washington, DC. A portion of the morning and afternoon sessions on February 11-12, 1988, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of

a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the sessions on February 11, 1988, will be as follows:

Committee Meetings

- 8:30-9:30 a.m.—Coffee for Council Members—Room 526 (Open to the Public)
 9:30-10:30 a.m.—Committee Meetings—Policy Discussion
 Education Programs—Room M-14
 Fellowship Programs—Room 315
 General Programs—Room 415
 Research Programs—Room 316-2
 State Programs—Room M-07 East
 10:30 a.m. until Adjourned—(Closed to the Public for the reasons stated above) Consideration of specific applications
 (Open to the Public) Policy Discussion
 2:00 p.m. until Adjourned—Jefferson Lecture—Room 430, (Closed to the Public)—Discussion of Jefferson, Lecture Nominees.

The morning session on February 12, 1988, will convene at 9:00 a.m., in the 1st Floor Council Room, M-09, and will be open to the public. The agenda for the morning session will be as follows: (Coffee for Staff and Council members attending the meeting will be served from 8:30-9:00 a.m.)

Minutes of the Previous Meeting Reports

- A. Introductory Remarks
- B. Introduction of New Staff
- C. Contracts Awarded in the Previous Quarter
- D. Application Report and Matching Report
- E. Status of Fiscal Year 1988 Funds
- F. Committee Reports on Policy and General Matters
 1. Education Programs
 2. Fellowship Programs
 3. Research Programs
 4. General Programs
 5. State Programs
 6. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of future budget requests and specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer,

Washington, DC 20506, or call area code (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 88-1664 Filed 1-26-88; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Change in Toll Free Telephone Recording for the High-Level Waste Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of change in toll free telephone recording for NRC's high-level waste (HLW) program.

SUMMARY: On June 28, 1984, the Nuclear Regulatory Commission (NRC) published a *Federal Register* Notice (49 FR 26655) regarding the establishment of a toll free telephone recording for the announcement of upcoming technical meetings between NRC and the Department of Energy related to the HLW program.

This recording has been expanded to include the announcement of upcoming NRC data reviews to DOE facilities and upcoming Commission meetings and Advisory Committee on Reactor Safeguards (ACRS) meetings in which topics concerning the high-level waste program will be discussed.

Effective January 11, 1988, the Division of High-Level Waste Management relocated to the agency's new office building located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, which effected a new telephone number for the toll free recording. This number is now 1/800/368-5642, Ext. 20436, or 492-0436 for Washington, DC area callers. The agency's mailing address remains unchanged.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen Tana, Division of High-Level Waste Management, Nuclear Regulatory Commission, Washington, DC 20555, Telephone 1/800-368-5642, Ext. 20438, or 492-0438 for Washington, DC area callers.

Dated at Rockville, Maryland, this 21st day of January 1988.

For the Nuclear Regulatory Commission.
 B. J. Youngblood,

Chief, Operations Branch, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 88-1629 Filed 1-26-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-416]

Mississippi Power & Light Company et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-29 issued to Mississippi Power & Light Company, System Energy Resources, Inc., and South Mississippi Electric Power Association, for operation of the Grand Gulf Nuclear Station, Unit 1, (GGNS or the facility) located in Claiborne County, Mississippi.

Systems Energy Resources, Inc. (SERI or the licensee), requested a license amendment by letter dated December 16, 1987. The proposed license amendment would delete a condition in the facility operating license (OL) and revise provisions in the Technical Specifications (TS) related to the qualifications and training of operating personnel for the facility. These changes are intended to implement an amendment to 10 CFR Part 55, "Operators' Licenses," which became effective May 26, 1987. The specific proposed changes are described as follows:

1. OL Condition 2.C.(30) states, "Permanent training center instructors and consultants assigned to training who, after initial criticality will teach systems, integrated responses, transients, and simulator courses to license candidates or NRC-licensed personnel, shall either demonstrate or have previously demonstrated their competence to the NRC staff by successful completion of a senior operator examination prior to teaching licensed operators."

SERI proposes to delete this condition, since the Grand Gulf Nuclear Station (GGNS) Operators Training Program is now accredited by the Institute of Nuclear Power Operations (INPO).

2. TS 6.3 states, "Each member of the unit staff shall meet or exceed the minimum qualifications of ANSI N18.1-1971 for comparable positions and the supplemental requirements specified in Section A and C of Enclosure 1 of the March 28, 1980 NRC letter" to all licensees. * * *

SERI proposes to delete the phrase "and the supplemental requirements specified in Section A and C of Enclosure 1 of the March 28, 1980 NRC letter" to all licensees" from the above TS, since 10 CFR Part 55, as amended, supersedes the March 28, 1980 NRC

letter. The reference to the footnote (#) would be retained.

3. TS 6.4 states, "A retraining and replacement training program for the unit staff * * * shall meet or exceed the requirements and recommendations of Section 5.5 of ANSI N18.1-1971 and Appendix "A" of 10 CFR Part 55 and the supplemental requirements specified in Sections A and C of Enclosure 1 of the March 28, 1980 NRC letter* to all licensees, * * *"

SERI proposes to delete the reference to "Appendix A" since the revision to 10 CFR Part 55 deleted this appendix. SERI also proposes to delete the phrase "and the supplemental requirements specified in Section A and C of Enclosure 1 of the March 28, 1980 NRC letter* to all licensees" since 10 CFR Part 55, as amended, supersedes the March 28, 1980 NRC letter. The reference to the footnote (#) would be retained.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By February 26, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in

the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the basis for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds,

Esquire, Bishop, Leiberman, Cook, Purcell, and Reynolds, 1200 17th Street NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Room, Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Bethesda, Maryland, this 21st day of January 1988.

For the Nuclear Regulatory Commission.

Lester L. Kintner,

Project Manager, Project Directorate II-1,
Division of Reactor Projects I/II.

[FR Doc. 88-1630 Filed 1-26-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co. and The Cleveland Electric Illuminating Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3 issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The amendment would permit an extension of the due date for surveillance testing to demonstrate the operability of the required independent circuits between the offsite transmission network and the onsite Class 1E distribution system by automatically and manually transferring the unit power supply to each of the 345 KV transmission lines. This surveillance is required by Technical Specification (TS) Section 4.8.1.1.1.b at least once each 18 months during unit shutdown. The

amendment would extend the due date to April 1, 1988, from March 11, 1988.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensees have evaluated the proposed change against the above criteria as required by 10 CFR 50.91(a). We have reviewed the licensees' evaluation, and agree with it. The licensees concluded that:

A. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the manual and automatic transfer capability will still be available, and deferral of the surveillance test has no impact on the probability of a loss of offsite power, load rejection, or station blackout. Also, adequate power sources known to be operable such as the diesel generators are available.

B. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because proper operation of the 13.8 KV transfer bus is still assured, and all failure modes are the same as previously analyzed. No changes to the physical arrangement or operational limits are involved.

C. The change does not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because all the assumptions used for the accident analyses in the Updated Safety Analysis Report remain unchanged, and the consequences of a malfunction of the 13.8 KV bus transfer remain within the bounds previously analyzed.

Therefore, based on these considerations and the three criteria given above, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of

publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland, from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 26, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to

which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up of fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating a shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received.

Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (In Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth Perkins: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., 2300 N Street NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Bethesda, Maryland, this 21st day of January, 1988.

For the Nuclear Regulatory Commission,
Albert W. De Agazio,
*Project Manager Project Directorate III-I,
Division of Reactor Projects-III, IV, V &
Special Projects.*

[FR Doc. 88-1631 Filed 1-26-88; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 4, 1988 through January 14, 1988. The last biweekly notice was published on January 13, 1988 (53 FR 817).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records,

Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 26, 1988 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in

the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket No. STN 50-528, Palo Verde Nuclear Generating Station (PVNGS), Unit 1, Maricopa County, Arizona

Date of amendment request:
December 4, 1987

Description of amendment request:
The proposed amendment would revise Technical Specification 3/4.5.1, "Safety Injection Tanks," and its associated Bases by (1) changing the lower limit boron concentration from 2000 to 2300 ppm, (2) revising the time for performing additional surveillances of boron concentration from "within 6 hours after each solution level increase of greater than or equal to 7 percent of tank narrow range level" to "whenever the tank is drained to maintain the contained borated water level within the

limits of Specification 3.5.1.b, and (3) changing the RCS pressure level above which surveillances are performed on the isolation valve operator from 700 psig to 430 psia so as to be consistent with the footnote in Specification 3/4.5.1. These changes would make Specification 3/4.5.1 for Palo Verde, Unit 1 consistent with Specification 3/4.5.1, previously approved by the staff for Palo Verde, Units 2 and 3, which are of the same design as Palo Verde, Unit 1.

Basis for Proposed No Significant Hazards Consideration Determination:
The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

A discussion of the proposed changes, as they relate to these standards is presented below.

Standard 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The only accident that could be affected by the proposed changes is the loss-of-coolant accident (LOCA). The combination of the first two proposed changes (i.e., increase to 2300 ppm for the lower limit boron concentration and the time for performing additional surveillances of the boron concentration) would assure that the boron concentration does not decrease below 2000 ppm (value assumed in the accident analysis) as a result of any back leakage from the RCS. The third change (i.e., RSB pressure limit for performing surveillances on the isolation valve operators) is more restrictive and is proposed for consistency in Specification 3/4.5.1. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Standard 2 - Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated.

The proposed changes do not result in any changes to plant design or to plant operation. Therefore, the proposed changes do not create the possibility of

a new or different kind of accident from any accident previously evaluated.

Standard 3 - Involve a Significant Reduction in a Margin of Safety.

The proposed changes would provide the same degree of protection against a postulated LOCA since the boron concentration in the safety injection tank would be maintained above 2000 ppm. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

Local Public Document Room

location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Arizona Public Service Company, et al.,
Docket No. STN 50-529, Palo Verde
Nuclear Generating Station (PVNGS),
Unit 2, Maricopa County, Arizona

Date of amendment request:

December 2, 1987

Description of amendment request:

The proposed amendment consists of a number of proposed changes to the Technical Specifications (Appendix A to Facility Operating License No. NPF-51) in support of Cycle 2 operation for the plant. The specific proposed changes are discussed below:

(1) Specification 3.1.1.2 - propose to change Figure 3.1-1A, "Shutdown Margin Versus Cold Leg Temperature," by changing the Hot Zero Power endpoint from 6.0 to 6.5% delta k/k to maintain plant operation during Cycle 2 within the bounds of safety analysis.

(2) Specification 3.1.1.3 - propose to change Figure 3.1-1, "Allowable MTC Modes 1 and 2," by broadening the operating bounds of the Moderator Temperature Coefficient (MTC) to accommodate Cycle 2 operation, and by revising the x axis parameter from average moderator temperature to core power level. The change to the Figure is proposed to ensure that the assumptions used in accident and transient analyses remain valid through each fuel cycle.

(3) Specification 3.2.8 - propose to change the operational pressure band of the pressurizer from 1815 - 2370 psia to 2025 - 2300 psia to ensure that the actual value of the pressurizer pressure is maintained within the range of values used in safety analyses.

(4) Specifications 3.1.3.1, 3.1.3.2, 3.1.3.7, 3.1.0.2 and 3.1.0.4 - propose to add

a new specification (3.1.3.7) to specify insertion limits for part length Control Element Assemblies (CEA), and to delete the part length CEA insertion limits from Specifications 3.1.3.1 and 3.1.3.2. The proposed change would add a more explicit limiting condition for operation of the part length CEAs to clarify the allowable duration for these CEAs to remain within the defined ranges of axial position. The proposed changes to Specifications 3.1.0.2 and 3.1.0.4 would reference the new Specification 3.1.3.7 to continue to permit the required special test exceptions to part length CEA insertion limits during certain reactor core tests.

(5) Specification 3.3.1 - propose to change Table 3.3-2 in this specification by decreasing the response time, from 0.75 to 0.30 seconds, for the DNBR - Low Reactor Coolant Pump Shaft Speed Trip. The proposed change would be consistent with the faster response time assumed in the Cycle 2 safety analysis.

(6) Specification 3.1.3.6 - propose to make the insertion limits for the full length CEAs in Figures 3.1-3 and 3.1-4 more restrictive due to the proposed changes in Cycle 2 core physics. The revised insertion limits are proposed to ensure that there is sufficient margin to mitigate the effects of a dropped CEA or an ejected CEA.

(7) Specification 3/4.3.1 - propose to change Table 3.3-2 by excluding an allowance to enter Core Protection Calculator (CPC) penalty factors to compensate for Resistance Temperature Detector (RTD) response times greater than 8 seconds. Table 3.3-2a, which specifies the amounts of the allowable CPC penalty factors, would be deleted. The proposed change would be required since the Cycle 2 safety analyses do not consider RTD response times greater than 8 seconds and, therefore, allowances for longer response times would not be permissible during Cycle 2 operation.

(8) Specification 2.1.1.1 and Table 2.2-1 - propose to change the Departure from Nucleate Boiling Ratio (DNBR) limitation from 1.231 to 1.24; delete references to the calculation of additional rod bow penalties into the DNBR limit; and change the pressurizer pressure floor incorporated into the DNBR limit from 1861 to 1860 psia. The proposed changes would be required to account for the core changes in Cycle 2.

(9) Specification 3.2.5 - propose to change the minimum Reactor Coolant System (RCS) total flow rate in Mode 1 from 164.0×10^6 to 155.8×10^6 lbm/hr. The proposed value of 155.8×10^6 lbm/hr is higher than the value used in the safety analysis (i.e., is more conservative). The proposed change would eliminate

ambiguity regarding compensation for instrument uncertainty.

(10) Specification 3.2.1 - propose to change the Linear Heat Rate (LHR) limit for the fuel assemblies from 14.0 to 13.5 kw/ft and to delineate how LHR is to be monitored. The change is proposed to ensure that the peak fuel clad temperature does not exceed safety limits during Cycle 2 operation.

(11) Specifications 3.2.4 and 3.3.1 - propose to change Specification 3.2.4 as follows: (a) provide a new format which would address the specific conditions for monitoring DNBR with or without the Core Operating Limit Supervisory System (COLSS) and/or the CEA Calculators (CEACs), (b) provide a new format which would delineate the Actions that should be taken, (c) remove reference to the DNBR Penalty Factor table used in Specification 4.2.4.4, and (d) replace the present graph Figures 3.2-1 and 3.2-2 for the DNBR limits with graph Figures 3.2-1, 3.2-2 and 3.2-2a which would address the DNBR operating limits for the conditions mentioned in (a) above. Propose to change Specification 3.3.1 by: (a) removing references to the operation of the reactor with both CEACs inoperable with or without COLSS in service, and (b) deleting the graph of DNBR margin operating limit based on COLSS for both CEAs inoperable (Figure 3.3-1) since these changes would be incorporated into the proposed changes in Specification 3.2.4. The changes are proposed to ensure operation of Cycle 2 within safety analysis limits and to improve these Specifications from a human factors point of view.

(12) Specification 3.2.3 - propose to change the action value for the Azimuthal Power Tilt allowance, when reactor power level is above 20% and COLSS is in service, from 0.10 to a range of values (i.e., 0.20 for a reactor power level of 20-30%, 0.15 for a reactor power level of 30-40%, and 0.10 for power levels above 40%). The proposed change would reduce the delay in power resumption (in order to burn out xenon buildup) following a reactor power cutback, while staying within the bounds of the safety analyses.

(13) Specification 3.3.2 - propose to change Table 3.3-4 by removing the "greater than" sign from the Refueling Actuation Signal (RAS) trip value in order to ensure optimal protection of the Refueling Water Storage Tank pumps by maintaining adequate margin for the RAS trip value within the allowable values specified in Table 3.3-4.

(14) Administrative Changes - propose to change the Bases Sections for Specifications 3/4.3.1, 3/4.3.2 and 2.2.1

to ensure clarity and conciseness. The proposed changes to the Bases Sections for 3/4.3.1 and 3/4.3.2 would update, to the latest approved revision, the report used for controlling changes to the CPC software, and remove Cycle 1 specific information. The proposed changes to the Bases Section for 2.2.1 would refer to the appropriate CE reports to be used for calculating trip setpoint values.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for determining whether a proposed amendment involves a significant hazards consideration (51 FR 7751). Examples of amendments that are not likely to involve a significant hazards consideration are as follows:

(i) A purely administrative change to technical specifications; for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature.

(ii) A change that constitutes an additional limitation, restriction or control not presently included in the technical specifications; for example, a more stringent surveillance requirement.

(iii) For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

The staff considers the first 12 items of the proposed amendment to be similar to example (iii) since they are directly related to a reactor core reloading and the fuel assemblies are not significantly different than those previously found acceptable for reload cores at Palo Verde. In addition, no significant changes are being made to the previously approved acceptance criteria for the technical specifications or to the analytical methods used to demonstrate conformance with the specifications and regulations.

Items (1) and (3) through (8) are also similar to example (ii) since they involve more restrictive limitations in the technical specifications to ensure that operation of the facility during Cycle 2 remains within the bounds of the safety analyses. Items (9), (10) and (11) are also similar to example (i) since they involve certain clarifications to the technical

specification as well as a proposed new format for Specifications 3.2.4 and 3.3.1.

The staff considers Item (13) to be similar to example (ii) since it imposes a more stringent limitation to the RAS trip value.

The staff considers Item (14) to be similar to example (i) since it involves a clarification and administrative changes to the technical specifications.

Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Arizona Public Service Company et al., Docket Nos. STN 50-528, STN 50-529 and STN 50-530 Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2 and 3, Maricopa County, Arizona

Date of amendment request: December 4, 1987

Description of amendment request: The proposed amendments would revise the Technical Specifications for Palo Verde Unit Nos. 1, 2, and 3 to incorporate a change to the Licensee's organization, Figures 6.2-1 and 6.2.2, "Offsite Organization" and "Onsite Organization", respectively, would be changed to have the Manager of Nuclear Fuels report to the Vice President of Nuclear Production in lieu of reporting to the Director of Engineering and Construction.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident from any accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided a discussion regarding the above criteria which proposes to determine that the requested change does not involve a significant hazards consideration.

Standard 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change does not alter the current design or operation of the facility. The change will only be to have the Manager of Nuclear Fuels reporting to the Vice President of Nuclear Production in lieu of reporting to the Director of Engineering and Construction. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2 - Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated.

The proposed change does not vary, effect, or provide any physical changes to the facility. The change is being made to enhance management effectiveness with regards to fuels management.

The Nuclear Fuels Department is responsible for fuels management and core analysis for PVNGS. The Manager of Nuclear Fuels provides nuclear fuel design, contracting and utilization expertise, nuclear fuel core and plant transient and accident analysis and alternative core operating strategies. These areas of responsibility will remain the same.

Therefore, the possibility of a different type of accident than previously analyzed will not be created.

Standard 3 - Involve a Significant Reduction in a Margin of Safety.

The proposed change does not impact the framework or responsibilities which currently exist in the Technical Specifications for conducting safe operations at PVNGS. The change is administrative in that the Manager of Nuclear Fuels will report directly to the Vice President of Nuclear Production in lieu of reporting to the Director of Engineering and Construction. Consequently, no reduction in the margin of safety will occur.

The proposed change is similar to one of the examples given in 51 FR 7751 of amendments that do not involve a significant hazards consideration. Specifically, the proposed amendment is a change which is an administrative change to the Technical Specifications to reflect a change in the organization, (example i).

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly the Commission proposes to determine that the proposed change to the Technical

Specifications involves no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NEC Project Director: George W. Knighton

Arizona Public Service Company, et al., Docket Nos. STN 50-528, 50-529 and 50-530 Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2 and 3, Maricopa County, Arizona

Date of amendment request: December 22, 1987

Description of amendment request: The proposed amendments would revise the Technical Specifications for Palo Verde Units Nos. 1, 2, and 3, Section 6.9.1.4 to change the due date for the annual reports described in Technical Specification 6.9.1.5. The amendment is necessary to make the Technical Specification requirements consistent with the requirements of 10 CFR 20.407 and to eliminate the potential for reports to be sent in late due to an inconsistency in the reporting requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident from any accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided the following discussion regarding the above criteria. The proposed change does not involve a significant hazards consideration because operation of Palo Verde Units 1, 2, and 3 in accordance with this change would not:

Standard 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change does not alter the current design or operation of the facility. The change is administrative in nature, making the reporting requirements in the Technical Specifications consistent with the

reporting requirements in 10 CFR 20.407. This does not affect any accident analyses. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2 - Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated.

The proposed change does not vary, effect, or provide any physical changes to the facility. The change modifies the due date for certain reports required by the Technical Specifications and has no impact on any FSAR Accident Analyses.

Therefore the possibility of an accident or malfunction of a different type than previously evaluated in the FSAR will not be created.

Standard 3 - Involve a Significant Reduction in a Margin of Safety.

The proposed change does not impact the framework or responsibilities which currently exist in the Technical Specifications for conducting safe operations at PVNGS. The change is administrative in nature and does not affect any limiting conditions for operation or surveillance requirements in the Technical Specifications, thereby, maintaining the margin of safety they provide. Consequently, no reduction in a margin of safety will occur.

The proposed change is similar to one of the examples given in 51 FR 7751 of amendments that do not involve a significant hazards consideration. Specifically, the proposed amendment is a change which is an administrative change to the Technical Specifications, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature (example i).

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Arkansas Power and Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit 1, Russellville, Arkansas

Date of amendment request: December 4, 1987

Description of amendment request: The proposed change revises the Technical Specifications to reflect changes in the licensee's organization. The proposed changes include both title changes and some organizational restructuring. The request supersedes the proposed organization change submitted by letter dated December 12, 1986.

Major changes include a new design engineering function reporting directly to the Vice President, Nuclear Operations and the consolidation of all licensing activities under a Licensing Manager reporting directly to the Executive Director, ANO Site Operations. The positions of Nuclear Service General Manager, and Special Projects Manager have been deleted. Functions formerly included with these two positions have been allocated to other parts of the organization.

A new department, The Nuclear Oversight/Support Department will be reporting directly to the Vice President, Nuclear Operations. The principal functions of the department will be to provide staff support for the Safety Review Committee and to provide corporate management oversight of various line functions.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7744). One of the examples (i) of these actions involving no significant hazards consideration relates to a purely administrative change to Technical Specifications. The proposed changes to the technical specifications for Arkansas Nuclear One, Unit 1 are associated with a recent licensee reorganization. Although personnel assignments are revised and reporting requirements are changed, the commitments to minimum qualifications and basic organizational reporting requirements are unchanged. These proposed changes are administrative in nature and do not change management controls presently in the Technical Specifications and, therefore, involve no significant hazards. These requests do not involve a significant increase in the probability or consequence of an accident or other adverse condition over previous evaluations; or create the possibility of a new or different kind of

accident or condition over previous evaluations; or involve a significant reduction in a margin of safety. Based on this information, the staff proposes to determine that the proposed change does not present a significant hazard.

Local Public Document Room

location: Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, DC 20036

NRC Project Director: Jose A. Calvo

Arkansas Power and Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Russellville, Arkansas

Date of amendment request:

December 4, 1987

Description of amendment request:

The proposed change revises the Technical Specifications to reflect changes in the licensee's organization. The proposed changes include both title changes and some organizational restructuring. The request supersedes the proposed organization change submitted by letter dated December 12, 1986.

Major changes include a new design engineering function reporting directly to the Vice President, Nuclear Operations and the consolidation of all licensing activities under a Licensing Manager reporting directly to the Executive Director, ANO Site Operations. The positions of Nuclear Service General Manager, and Special Projects Manager have been deleted. Functions formerly included with these two positions have been allocated to other parts of the organization.

A new department, The Nuclear Oversight/Support Department will be reporting directly to the Vice President, Nuclear Operations. The principal functions of the department will be to provide staff support for the Safety Review Committee and to provide corporate management oversight of various line functions.

Basis for proposed no significant hazards consideration determination:

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7744). One of the examples (i) of these actions involving no significant hazards consideration relates to a purely administrative change to Technical Specifications. The proposed changes to the technical specifications for Arkansas Nuclear One, Unit 2 are associated with a recent licensee reorganization. Although personnel assignments are revised and reporting

requirements are changed, the commitments to minimum qualifications and basic organizational reporting requirements are unchanged. These proposed changes are administrative in nature and do not change management controls presently in the Technical Specifications and, therefore, involve no significant hazards. The request does not involve a significant increase in the probability or consequence of an accident or other adverse condition over previous evaluations; or create the possibility of a new or different kind of accident or condition over previous evaluations; or involve a significant reduction in a margin of safety. Based on this information, the staff proposes to determine that the proposed change does not present a significant hazard.

Local Public Document Room

location: Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, DC 20036

NRC Project Director: Jose A. Calvo

Carolina Power & Light Company, et al., Docket 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of application for amendment:

September 4, 1987, supplemented October 2, 1987

Description of amendment request:

The proposed amendment would change the Technical Specifications (TS) to (1) incorporate the operating limits (Average Power Range Monitor (APRM) setpoints, Minimum Critical Power Ratio (MCPR) values, Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) values, and Linear Heat Generation Rate (LHGR) requirements) for all fuel types for Cycle 8 operation of the Brunswick Steam Electric Plant, Unit 2, and (2) modify the Bases associated with the new reload fuel. The values of mu and sigma found in Specification 3.2.3.2 have been revised to conform to the advanced GEMINI/ODYN analysis methods. Revisions are also provided to the existing definitions for Critical Power Ratio and Physics Tests.

The MCPR values reflected in the proposed Technical Specifications include a conservative adder of 0.02 to the MCPR values provided in the Supplemental Reload Licensing Report. On occasion, operational conditions, such as a main steam line isolation valve out-of-service or a feedwater heater out-of-service event, have arisen. During past occurrences of these events, analyses of the impact on MCPR to support extended periods of operation

with such conditions have been conservatively bounded by an adder value of 0.02. Thus, this adder will be included to preclude the need to request emergency/exigent TS relief that might otherwise be needed in the event of a similar operational condition.

The Technical Specification changes relate to the inclusion of new and/or revised MCPR limits, APRM setpoints, MAPLHGR limits, and LHGR limits for all fuel types using Cycle 8 core and transient parameters.

The new reload fuel for Cycle 8 is the GE extended burnup barrier fuel, GE8x8EB. This fuel type has been approved by the NRC in the Safety Evaluation Report for Amendment 10 to the General Electric Standard Application for Reactor Fuel (GESTAR II) (NEDE-24011-P-A).

The values for mu and sigma found in Specification 3.2.3.2 reflect the GESTAR II (NEDE-24011-P-A) requirement to conform with the advanced GEMINI/ODYN analysis methods for the Option B scram time insertion. Use of the GEMINI method has been previously reviewed and approved by the NRC for evaluation of operating limit MCPR values in the Safety Evaluation Report for Amendment 11 to GESTAR II (NEDE-24011-P-A). The revised mu and sigma values are appropriate for 20% scram insertion time requirements (defined as the time from de-energization of the scram pilot valve solenoid to pickup of the control rod notch position 36 reed switch). In addition, a reference to notch 36 has been added to the Specification 3.2.3.2 limiting condition for operation (LCO) for consistency. Notch 36 has already been established in this LCO as the control rod position corresponding to the 20% scram time position.

Basis for proposed no significant hazard consideration determination:

The Commission has provided standards for determining whether a no significant hazard consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident

previously evaluated. These changes are bounded by the analyses provided in the Updated Final Safety Analysis Report (FSAR). Operational transients analyzed in the Updated FSAR have been re-evaluated in detail. The Supplemental Reload Licensing Report provides a summary of the limiting operating transient, stability, and selected accident analyses for the proposed core arrangement. The 8x8 fuel assemblies to be installed in the core are not significantly different from the 8x8 fuel assemblies they are replacing. The NRC Staff has previously approved the design of the GE8x8EB fuel assemblies in Amendment 10 of GESTAR II (NEDE-24011-P-A). The NRC Staff has also approved in GESTAR II the analytical methods used to evaluate the effects of the replacement fuel on thermal-hydraulic limits and transients.

2. The proposed amendment does not create the possibility of a new or different accident for the same reasons as stated in item 1. This reload merely changes the initial conditions and/or final condition used in the existing analyses and does not create any new accident mode.

3. The proposed amendment does not involve a significant reduction in a margin of safety because the plant will be operated under the same Safety Limits with Minimum Critical Power Ratio (MCPR), maximum Average Planar Linear Heat Generation Rate (MAPLHGR), and Linear Heat Generation Rate (LHGR) operating limits comparable to those currently established. The Supplemental Reload Licensing Report provides a summary of the limiting operating transient, stability, and selected accident analyses for the proposed core arrangement. The MCPR, MAPLHGR, and LHGR limits have been revised to assure the margin of safety is maintained as demonstrated in the "Supplemental Reload Licensing Report for Brunswick Steam Electric Plant Unit 2, Reload 7, Cycle 8."

Based on the above reasoning, the licensee has determined that the proposed changes involve no significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposed to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room
location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for the licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, NC 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al.,
Docket No. 50-324, Brunswick Steam Electric Plant, Unit No. 2, Brunswick County, North Carolina

Date of application for amendment:
November 18, 1987

Description of amendment request:
The proposed amendment would change Item 2 of Technical Specification (TS) Tables 3.3.5.6-1, 3.3.5.6-2 and 4.3.5.6-1 to replace instrument tag number TS-CR-863 with TS-CIT-863-3. This change is needed as a result of upgrading instrumentation during a planned plant modification during the Brunswick Steam Electric Plant, Unit 2, refueling outage of January 1988. Item 2 lists chloride leak detection instrumentation in the condensate pump discharge. This instrumentation provides indication of chloride intrusion in the feedwater and condensate systems. Chlorides pose a long-term threat to the integrity of stainless steel piping systems. The change is necessary due to a plant modification that will replace the instrument represented by TS-CR-863-3 with an upgraded conductivity cell and analyzer represented by tag number TS-CIT-863-3. The upgraded components are capable of detecting and compensating for temperature transients that may occur in the sample being analyzed. The new conductivity analyzer will provide a direct and continuous reading without relying on a recorder, and will also provide an output to a recorder for trending purposes.

Basis for proposed no significant hazards consideration determination:
The Commission has provided standards for determining whether a no significant hazard consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that:
1. The accidents analyzed in Chapter 14 of the FSAR are not affected by the chloride leak detection instrumentation change because the function of the instrument is not altered, and the chloride limits established in TS 3/4.4.4 are not being changed. In addition, the new instrument being installed is capable of detecting and compensating for temperature transients which may occur in the sample being analyzed. The current system requires additional data processing to

achieve the same results. Based on this reasoning, CP&L has determined that the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. As stated above, the chloride leak detection instrumentation provides protection from long-term piping degradation in the feedwater and condensate systems caused by chloride intrusion. No possibility of a new or different kind of accident is created because the new instruments perform the same basic function as the ones they are replacing. Also, the reactor coolant system chloride limits established in TS 3/4.4.4 are not being changed. The new instrument has enhanced capabilities; it processes the data into a more useful form prior to readout. Based on the above reasoning, CP&L has determined that the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The margin of safety is not reduced because, as stated above, the new instrument performs the same basic function as the one it is replacing and the chloride limits established in TS 3/4.4.4 is not being changed. In fact, the new instrument has enhanced capabilities which may provide the user with better data, thereby providing earlier indication of chloride intrusion, and perhaps avoiding long-term problems with pipe degradation due to chloride intrusion. Based on this reasoning, CP&L has determined that the proposed amendment does not involve a significant reduction in margin of safety.

Based on the above reasoning, the licensee has determined that the proposed changes involve no significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room
location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for the licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, NC 27602

NRC Project Director: Elinor G. Adensam

Duke Power Company, et al., Docket
Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request:
December 3, 1987

Description of amendment request:
The proposed amendments would increase the containment overall

integrated leakage rate in Technical Specification 3.6.1.2 from its current L_a value of 0.20% per day to 0.30% per day (See Appendix J to 10 CFR Part 50 for definition of L_a corresponding at Catawba to a containment pressure of 14.68 psig).

Basis for proposed no significant hazards consideration determination: The licensee provided revised radiation exposure calculations for a design basis LOCA using the methodology from Revision 1 of the Standard Review Plan (SRP), Section 6.5.2, which recognizes that containment spray systems with boric acid spray solutions have been shown to be effective for removal of elemental and particulate iodine. The revised analyses demonstrate for thyroid doses that the proposed 50% increase in the containment leakage rate would be nearly offset by the effect of the spray system. This permits the licensee to take credit for the iodine removal effect of the boric acid which is contained in containment spray water for other reasons. Since noble gases are unaffected by containment sprays, an increased containment leakage rate would result in increased whole body and skin doses. However, for the Catawba Nuclear Station, thyroid radiation exposure is the limiting criterion, and the licensee's calculations show that the whole body and skin doses would remain well below the acceptance criteria in Appendix A of SRP Section 15.6.5 for offsite exposure (i.e., 10 CFR 100.11 values) and acceptance criteria in SRP 6.4 (i.e., GDC 19) for control room personnel.

The results of the licensee's calculations of onsite dose inside the control room are as follows: The whole body dose increases from .46 to .70 rem, which is less than the allowable limit of 5 rems; the skin dose increases from 9 to 14 rems, which is less than the allowable limit of 30 rems; and the thyroid dose decreases from 25.9 to 18.9 rems, which is less than the allowable limit of 30 rems.

The results of the licensee's calculations of offsite dose at the exclusion area boundary are as follows: The whole body dose increases from 2.99 to 4.47 rems, which is less than the allowable limit of 25 rems; and the thyroid dose increases from 115 to 131 rems, which is less than the allowable limit of 300 rems. The results of the licensee's calculations of offsite dose at the low population zone are as follows: The whole body dose increases from 0.761 to 0.863 rem, which is less than the allowable limit of 25 rems; and the thyroid dose decreases from 50.8 to 29.7

rems, which is less than the allowable limit of 300 rems.

It should be noted that in the revised analyses, containment sprays are assumed to remove iodine from the post-accident containment atmosphere exponentially with time over the initial 116 minutes following the occurrence of a potential accident. Therefore, the effect of boric acid solutions in containment spray would reduce iodine release rates more during time periods approaching 116 minutes with the greatest reductions in release rates occurring after the initial 116 minutes. As an iodine removal result, the low population zone thyroid dose is substantially reduced because containment spray would more than offset the 50% increase in containment leakage over the 30 day time period for which the calculations are performed. However, for the offsite dose at the exclusion area boundary it is higher by slightly more than 10% in the revised analyses because containment spray iodine removal would only partially offset the 50% increase in containment leakage over the 2 hour time period for which the calculations are performed.

Preliminary review by the NRC supports these results and statements by the licensee. The Commission has provided guidance concerning the application of the standards in 10 CFR Part 50.92 by providing certain examples (51 FR 7144) of actions involving no significant hazards considerations. One of the examples (vi) involves a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan; for example, a change resulting from the application of a small refinement of a previously used calculational model or design method. The proposed amendments match the example because, as noted above, the doses after a design basis LOCA with the increased containment leakage rate, but with allowance for the containment spray system, would remain below the acceptance criteria for radiological exposure in Appendix A of SRP 15.6.5 and in SRP 6.4. Other criteria in the SRP sections would not be affected by the proposed change. Therefore, the Commission proposes to determine that the change involves no significant hazards consideration.

Local Public Document Room
location: York County Library, 138 East

Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Kahtan N. Jabbour, Acting Director

Florida Power and Light Company,
Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request:
November 16, 1987, as supplemented December 30, 1987.

Description of amendment request:
The amendment would upgrade the technical specifications (TS) dealing with the inservice testing of ASME Code Class 1, 2, and 3 pumps and valves. In addition, the amendment would make the Unit No. 1 TS similar to the Unit No. 2 TS, as well as to the Combustion Engineering-Standard Technical Specifications (CE-STs), thereby promoting consistency between the units.

The licensee proposed to delete from the TS those pump surveillance requirements that are already contained in the licensee's inservice testing (IST) program. The licensee's IST program is a licensee-controlled document. In addition, the licensee proposed to add to the TS those pump surveillance requirements that are not contained in the licensee's IST program. For example, the licensee proposed to change the charging pump-operating surveillance requirement (TS 4.1.2.4) in the following manner: delete the periodic start and run requirement from the TS because this requirement is contained in the IST program; add the pump discharge requirement to the TS (40 gpm in this case) as well as the requirement to test the pump pursuant to proposed TS 4.0.5. Proposed TS 4.0.5 is a surveillance requirement which requires the licensee to follow the Commission's IST Regulations, ASME Code, Section XI, and the licensee's IST program. TS 4.0.5 will be explained in more detail later. Similar changes are proposed to the following TS: TS 4.1.2.3 (Charging Pump-Shutdown); TS 4.1.2.5 (Boric Acid Pumps-Shutdown); TS 4.1.2.6 (Boric Acid Pumps-Operating); TS 4.5.2b (ECCS Pumps); TS 4.6.2.1 (Containment Spray Pumps); TS 4.7.1.2 (Auxiliary Feedwater Pumps); TS 4.7.3.1 (Component Cooling Water Pumps); and TS 4.7.4.1 (Intake Cooling Water Pumps). The licensee's proposed changes identified above would make the pump testing requirements similar to the pump testing requirements contained in the CE-STs and the Unit 2 TS.

The licensee proposed to delete from the TS those valve surveillance requirements that are already contained in the licensee's IST program. In addition, the licensee proposed to add to the TS those valve surveillance requirements that are not contained in the licensee's IST program. For example, the licensee proposed to change the main steam safety valve surveillance requirement (TS 4.7.1.1) in the following manner: delete the test requirement per the ASME Boiler and Pressure Vessel Code, 1974 Edition; add the requirement that no additional surveillance requirements are required other than those specified per the new TS 4.0.5. Similar changes are proposed to the following TS: TS 4.1.2.1 (Flow Paths-Shutdown); TS 4.1.2.2 (Flow Paths-Operating); TS 4.4.2 (Safety Valves-Shutdown); TS 4.4.3 (Safety Valves-Operating); TS 4.5.2 (ECCS Valves); TS 4.6.2.1 (Containment Spray Valves); TS 4.6.3.1.1 (Containment Isolation Valves); TS 4.6.5.1 (Vacuum Relief Valves); TS 4.7.1.2 (Auxiliary Feedwater Valves); TS 4.7.1.5 (Main Steam Isolation Valves); TS 4.7.3.1 (Component Cooling Water System Valves); and TS 4.7.4.1 (Intake Cooling Water System Valves). The licensee's proposed changes identified above would make the valve testing requirements similar to the valve testing requirements contained in the CE-STS and the Unit 2 TS.

In order to reference the IST program as a licensee-controlled document, the licensee proposed a new TS 4.0.5, which consists of five sections. Section a. will reference 10 CFR 50.55a(g) (Codes and Standards - Inservice Testing Requirements), which in turn references the ASME Code/IST program. Section b. will illustrate the surveillance intervals. Section c. will provide for interval extensions. Section d. will state that the IST activities are in addition to other specified surveillance requirements. Section e. will specify that nothing in the Code shall be construed to supersede the requirements of any technical specification. The new TS 4.0.5 is the same as what is contained in the Unit 2 TS and the CE-STS.

The licensee proposed other changes that are not strictly under the IST program. The licensee proposed to stroke the containment sump isolation valves and the recirculation valve to the refueling water tank via recirculation actuation signal on an 18 month frequency, versus a monthly frequency. Thus, TS 4.5.2b.3 would be deleted, and TS 4.5.2e.3 would be added. Similarly, the licensee proposed to stroke the containment sump isolation valves and ensure that a recirculation mode flow

path via an operable shutdown cooling heat exchanger is ensured via the recirculation actuation signal on an 18 month frequency, versus a monthly frequency. Thus, TS 4.6.2.1a.5 would be deleted, and TS 4.6.2.1c.3 would be added. These proposed requirements are the same as the CE-STS and Unit 2 TS requirements. In addition, the licensee proposed changes to the main steam safety valve limiting condition of operation (LCO) TS (TS 3.7.1.1). Table 4.7-1 contains the lift settings for these valves. The licensee proposed to reference the table in the LCO statement instead of the surveillance requirement statement. The licensee also proposed to add a new action statement which would read, "The provisions of specification 3.0.4 are not applicable." These proposed requirements are the same as the CE-STS and Unit 2 TS requirements.

Lastly, because of the above proposed changes, the surveillance requirements currently contained in the TS will need to be renumbered.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis.

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The addition to Technical Specification Section 4.0, Surveillance Requirements, is a change to achieve consistency between the St. Lucie Unit 1 Technical Specifications and the St. Lucie Unit 2 Technical Specifications. The intent of the Specifications has not been changed. The change incorporates the format/wording of the Combustion Engineering-Standard Technical Specifications and the St. Lucie Unit 2 Technical Specifications[,] which have been previously approved by the staff. Reference to Surveillance Requirements of a specific Edition and Addenda of Section XI of the ASME Boiler and Pressure Vessel Code have been removed. A new Specification 4.0.5 has

been added to provide Surveillance Requirements for Inservice Testing (IST) of ASME Code Class 1, 2 and 3 Components in accordance with Section XI of the Code and applicable addenda as required by 10 CFR 50.55a(g). The addition of a new Specification 4.0.5 will establish the relationship between the Technical Specifications and the Code of Federal Regulations that deal with IST and the ASME Code. The pump and valve surveillance activities which have been removed from the Technical Specifications are contained in Section XI of the ASME Code and, therefore, are included in the St. Lucie Unit 1 Pump and Valve Program. The IST program will remain in effect as a licensee-controlled document referenced in the Technical Specifications[,] instead of the program itself being a Technical Specification.

Requirements of the ASME Section XI Inservice Testing Program and, therefore, the St. Lucie Unit 1 Inservice Testing Program, provide for measurement and evaluation of pump mechanical characteristics as well as additional measurement and evaluation of pump hydraulic characteristics. These activities are performed to determine pump operational readiness. Also, requirements of the ASME Section XI Testing Program provide for additional measurement and evaluation for determining valve operational readiness. The St. Lucie Unit 1 Inservice Testing Program provides a level of quality in testing of pumps and valves consistent with recent versions of the ASME Section XI Code and, therefore, the removal of certain pump and valve surveillance activities from the Technical Specifications does not involve a reduction in the level of quality in testing of pumps and valves at St. Lucie Unit 1.

The surveillance activity of verifying electrical power from an operable emergency bus has been removed from individual specifications in that the operability requirements for electrical power sources are maintained as required for the Electrical Power System portion of the St. Lucie Unit 1 Technical Specifications.

The surveillance activity of verifying that the containment sump isolation valves open upon a Recirculation Actuation Signal has been changed from a 31 day surveillance activity to an 18 month surveillance activity. This change is being made to achieve consistency with the Combustion Engineering-Standard Technical Specifications and the St. Lucie Unit 2 Technical Specifications. As required by the St. Lucie Unit 1 Technical Specifications, the manual recirculation actuation signal feature is tested on an 18 month frequency as are the other manual engineered safety features. Also, as required by the ASME Valve Program[,] the containment sump isolation valves are tested on a quarterly basis. A review of the surveillance activity sheets for verifying that the containment sump isolation valves open upon a recirculation actuation signal has been completed for an 18 month period from May 1986 to October 1987 and no failures were observed. The containment sump isolation valves on St. Lucie Unit 1 are similar to the valves on St. Lucie Unit 2 in

that they are 24 inch valves manufactured by Henry Pratt.

An addition to the Turbine Cycle-Safety Valves action statement has been made to show that the provisions of Specification 3.0.4 are not applicable for entry into an Operational Mode. This change is being made to achieve consistency with the Combustion Engineering-Standard Technical Specifications. This is consistent with the Technical Specifications, in that Startup and/or Power Operation is allowable with safety valves inoperable within the limitations of the Action requirements.

Therefore, based on the above, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

In connection with the second standard, the licensee provided the following:

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The addition to Technical Specification Section 4.0, Surveillance Requirements, is a change to achieve consistency between the St. Lucie Unit 1 Technical Specifications and the St. Lucie Unit 2 Technical Specifications. The intent of the Specifications has not been changed. The change incorporates the format/wording of the Combustion Engineering-Standard Technical Specifications and the St. Lucie Unit 2 Technical Specifications[,] which have been previously approved by the staff.

Reference to Surveillance Requirements of a specific Edition and Addenda of Section XI of the ASME Boiler and Pressure Vessel Code have been removed. A new Specification 4.0.5 has been added to provide Surveillance Requirements for Inservice Testing of ASME Code Class 1, 2, and 3 Components in accordance with Section XI of the Code and applicable addenda as required by 10 CFR 50.55a(g). The pump and valve surveillance activities which have been removed from the Technical Specifications are contained in Section XI of the ASME Code and, therefore, are included in the St. Lucie Unit 1 Pump and Valve Program. The IST program will still be governed by the Commission's rules and regulations.

Requirements of the ASME Section XI Inservice Testing Program and, therefore, the St. Lucie Unit 1 Inservice Testing Program, provide for measurement and evaluation of pump mechanical characteristics as well as additional measurement and evaluation of pump hydraulic characteristics. These activities are performed to determine pump operational readiness. Also, requirements of the ASME Section XI Testing Program provide for additional measurement and evaluation for determining valve operational readiness. The St. Lucie Unit 1 Inservice Testing Program provides a level of quality in testing of pumps and valves consistent with recent versions of the ASME Section XI Code and, therefore, the removal of certain pump and valve surveillance activities from the Technical Specifications does not involve a reduction in the level of quality in testing of pumps and valves at St. Lucie Unit 1.

The surveillance activity of verifying electrical power from an operable emergency

bus has been removed from individual specifications in that the operability requirements for electrical power sources are maintained as required for the Electrical Power System portion of the St. Lucie Unit 1 Technical Specifications.

The surveillance activity of verifying that the containment sump isolation valves open upon a Recirculation Actuation Signal has been changed from a 31 day surveillance activity to an 18 month surveillance activity. This change is being made to achieve consistency with the Combustion Engineering-Standard Technical Specifications and the St. Lucie Unit 2 Technical Specifications. As required by the St. Lucie Unit 1 Technical Specifications, the manual recirculation actuation signal feature is tested on an 18 month frequency as are the other manual engineered safety features. Also, as required by the ASME Valve Program the containment sump isolation valves are tested on a quarterly basis. A review of the surveillance activity sheets for verifying that the containment sump isolation valves open upon a recirculation actuation signal has been completed for an 18 month period from May 1986 to October 1987 and no failures were observed. The containment sump isolation valves on St. Lucie Unit 1 are similar to the valves on St. Lucie Unit 2 in that they are 24 inch valves manufactured by Henry Pratt.

An addition to the Turbine Cycle-Safety action statement has been made to show that the provisions of Specification 3.0.4 are not applicable for entry into an Operational Mode. This change is being made to achieve consistency with the Combustion Engineering-Standard Technical Specifications. This is consistent with the Technical Specification, in that Startup and/or Power Operation is allowable with safety valves inoperable within the limitations of the Action requirements.

Therefore, based on the above, the changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The licensee addressed the third standard as follows:

Use of the modified specification would not involve a significant reduction in a margin of safety.

The addition to Technical Specification Section 4.0, Surveillance Requirements, is a change to achieve consistency between the St. Lucie Unit 1 Technical Specifications and the St. Lucie Unit 2 Technical Specifications. The intent of the Specifications has not been changed.

The change incorporates the format/wording of the Combustion Engineering-Standard Technical Specifications and the St. Lucie Unit 2 Technical Specifications which have previously been approved by the staff.

Reference to Surveillance Requirements of a specific Edition and Addenda of Section XI of the ASME Boiler and Pressure Vessel Code have been removed. A new Specification 4.0.5 has been added to provide Surveillance Requirements for Inservice Testing of ASME Code Class 1, 2 and 3 Components in accordance with Section XI of the Code and applicable addenda as required by 10 CFR 50.55a(g). The pump and valve surveillance

activities which have been removed from the Technical Specifications are contained in Section XI of the ASME Code and, therefore, are included in the St. Lucie Unit 1 Pump and Valve Program.

Requirements of the ASME Section XI Inservice Testing Program and, therefore, the St. Lucie Unit 1 Inservice Testing Program, provide for measurement and evaluation of pump mechanical characteristics as well as additional measurement and evaluation of pump hydraulic characteristics. These activities are performed to determine pump operational readiness. Also, requirements of the ASME Section XI Testing Program provide for additional measurement and evaluation for determining valve operational readiness. The St. Lucie Unit 1 Inservice Testing Program provides a level of quality in testing of pumps and valves consistent with recent versions of the ASME Section XI Code and, therefore, the removal of certain pump and valve surveillance activities from the Technical Specifications does not involve a reduction in the level of quality in testing of pumps and valves at St. Lucie Unit 1. The IST program will remain in effect as a licensee-controlled document referenced in the Technical Specifications instead of the program itself being a Technical Specification.

The surveillance activity of verifying electrical power from an operable emergency bus has been removed from individual specifications in that the operability requirements for electrical power sources are maintained as required for the Electrical Power System portion of the St. Lucie Unit 1 Technical Specifications.

The surveillance activity of verifying that the containment sump isolation valves open upon a Recirculation Actuation Signal has been changed from a 31 day surveillance activity to an 18 month surveillance activity. This change is being made to achieve consistency with the Combustion Engineering-Standard Technical Specifications and the St. Lucie Unit 1 Technical Specifications. As required by the St. Lucie Unit 1 Technical Specifications, the manual recirculation actuation signal feature is tested on an 18 month frequency as are the other manual engineered safety features. Also, as required by the ASME Valve Program [,] the containment sump isolation valves are tested on a quarterly basis. A review of the surveillance activity sheets for verifying that the containment sump isolation valves open upon a recirculation actuation signal has been completed for an 18 month period from May 1986 to October 1987 and no failures were observed. The containment sump isolation valves on St. Lucie Unit 1 are similar to the valves on St. Lucie Unit 2 in that they are 24 inch valves manufactured by Henry Pratt.

An addition to the Turbine Cycle-Safety Valves action statement has been made to show that the provisions of Specification 3.0.4 are not applicable for entry into an Operational Mode. This change is being made to achieve consistency with the Combustion Engineering-Standard Technical Specifications. This is consistent with the Technical Specifications in that Startup and/or

or Power Operation is allowable with safety valves inoperable within the limitations of the Action requirements.

Therefore, based on the above, the changes do not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff believes that the licensee has met the three standards of 10 CFR 50.92 because:

(1) The IST program will remain in effect as a licensee-controlled document referenced in the TS instead of a portion of the program itself being a TS.

(2) The IST program will still be governed by the Commission's rules and regulations.

(3) The addition of a new TS 4.0.5 will establish the relationship between the TS and the Code of Federal Regulations that deal with IST and the ASME Code itself.

(4) Valve stroking under receipt of a recirculation actuation signal on an 18 month frequency has been found acceptable on similar plants with similar system configurations.

(5) Main steam safety valve surveillance requirement changes have been found acceptable on similar plants with similar system configurations, and

(6) The proposed TS are basically those contained in the Unit 2 TS and CE-STS, which have been previously approved by the staff.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: December 22, 1987

Description of amendment request: The proposed amendment would change the action statement of technical specification 3.7.1.6 to allow 72 hours to restore to operable an inoperable open main feedwater isolation valve. The current return to operability requirement is 4 hours.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists

(10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis.

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed 72 hour Action statement with an inoperable Main Feedwater Isolation Valve (MFIV) is consistent with other safeguards equipment outage times. The likelihood of a feedline or steamline break with a concurrent failure of the second valve in the same feedline is remote during the outage time. Thus, the proposed 72 hour allowable outage time will not significantly increase the probability or consequences of an accident previously evaluated.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change will not create the possibility of a new or different kind of accident from any previously analyzed because it does not introduce a new mode of normal or emergency plant operation. In addition the proposed change does not involve a physical modification to the plant.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

Because of failure of the second MFIV in the same feedline with a simultaneous feedline or steamline break during the seventy-two (72) hour allowable outage time is unlikely, this change does not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff believes that the licensee has met the three standards of 10 CFR 50.92 because failure of a second main feedwater isolation valve in the same feedline with a simultaneous feedline or steamline break during a 72 hour allowable outage time is highly unlikely. Based upon the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College

Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: December 22, 1987

Description of amendment request: The amendment would change certain surveillance requirements dealing with moderator temperature coefficient (MTC). The allowable range of MTC, as defined in the limiting condition for operation (LCO), will not change. The MTC for each unit is addressed in TS 3/4 1.1.4.

In order to demonstrate that the MTC is within allowable values, Surveillance Requirement 4.1.1.4.2 requires MTC measurement three times during a cycle: at beginning of cycle, at equilibrium boron concentration of 800 ppm and at equilibrium boron concentration of 300 ppm. The licensee proposed changes to this surveillance requirement.

The Unit 1 surveillance requirement requires the first measurement of MTC prior to initial operation above 5% rated thermal power, after each refueling (TS 4.1.1.4.2.a). The Unit 2 surveillance requirement requires the first measurement of MTC prior to initial operation above 5% rated thermal power, after each fuel loading (TS 4.1.1.4.2). The licensee proposes to make both surveillance requirements identical, using the wording of Unit 2 as the standard wording. For purposes of this specification, the word "refueling" can be interchanged with the words "fuel loading". The Unit 2 wording is the same wording as contained in the Combustion Engineering (CE) Standard Technical Specifications.

The Unit 1 surveillance requirement requires the second measurement of MTC at any thermal power, within 7 effective full power days (EFPD) after initially reaching a rated thermal power equilibrium boron concentration (TS 4.1.1.4.2.b). The Unit 2 surveillance requirement requires the second measurement of MTC at any thermal power, within 7 EFPD after reaching a rated thermal power equilibrium boron concentration of 800 ppm (TS 4.1.1.4.2.b). The licensee proposes to make the wording of both surveillance requirements identical by using the wording of Unit 2 as the standard wording. The addition of the precise

boron concentration (800 ppm) for the Unit 1 second MTC measurement clarifies when the second measurement would be made. The Unit 2 wording is the same wording as contained in the CE-Standard Technical Specifications.

The surveillance requirements for both Units 1 and 2 require the third measurement of MTC at any thermal power, within 7 EFPD after reaching a rated thermal power equilibrium boron concentration of 300 ppm (TS 4.1.1.4.2.c). This is the same surveillance requirement contained in the CE-Standard Technical Specifications. The licensee is proposing a change to this requirement to the extent that this third measurement would not be made if the results of the previous two measurements are within a tolerance of ± 2.0 pcm/ $^{\circ}$ F from corresponding design values. The licensee believes that if the calculated values of MTC at the beginning of cycle life and at an equilibrium boron concentration of 800 ppm are within ± 2.0 pcm/ $^{\circ}$ F of the measure values per Surveillance Requirements 4.1.1.4.2.a and b, then there is no need to take the third measurement at equilibrium boron concentration of 300 ppm. It is assumed that the calculated value of MTC at equilibrium boron concentration of 300 ppm would be the actual value or very close to it, thereby assuring that the LCO is being met.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to these standards, the licensee provided the following analysis.

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Under the proposed changes, adequate assurances of compliance with current MTC limitations are maintained by the modified surveillance program. In addition to the MTC tests which will still be required during each cycle, the factors that affect the MTC will be

monitored during the cycle as required by Technical Specification Surveillance Requirement 4.1.1.1.2. This ensures that the reactivity behavior of the core has been accurately calculated and that the MTC will remain within Technical Specification Limiting Condition for Operations (LCO's).

Consequences of accidents previously evaluated will not be increased because this change will not require the modification of any assumption used in the input to the current safety analysis. The current safety calculations will remain valid because the allowed range of MTC values in Technical Specification 3.1.1.4. will not be changed.

The change to St. Lucie Unit 1 Surveillance Requirement 4.1.1.4.2.b will change the time in the cycle when the second MTC surveillance is required, so that this requirement will be consistent with Combustion Engineering Standard Technical Specifications (NUREG 0212 Rev. 2). This will not increase the probability of or consequences of any accident previously evaluated.

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident initiators are created by the incorporation of the modified surveillance requirements. The change will not result in any change to the methods of operating the plant.

Use of the modified specification would not involve a significant reduction in a margin of safety.

The margin of safety will not be reduced as a result of this change because the range of allowed MTC values are defined by Technical Specification LCO's, which will not be changed. The modified surveillance program will maintain the requirement to perform the EOC MTC test in the event the reactivity behavior during the cycle does not perform as predicted by design calculations. The modified surveillance program will continue to provide adequate assurance that the MTC characteristics are as predicted by design calculations and are within the range of accepted values.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff believes that the licensee has met the three standards of 10 CFR 50.92 because: (1) under the proposed change to Surveillance Requirement 4.1.1.4.2.c, adequate assurances of compliance with current MTC limitations for both units are maintained by the modified surveillance and the continued use of the overall core reactivity balance surveillance (TS 4.1.1.1.2); (2) the wording change for Unit 1 associated with Surveillance Requirement 4.1.1.4.2.b introduces a more precise definition when the second MTC measurement will be made, and (3) the wording change for Unit 1 associated with Surveillance Requirement 4.1.1.4.2.a is insignificant from a safety viewpoint.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: December 18, 1987 (TSCR 165)

Description of amendment request: The proposed amendment would revise Technical Specification 3.7.B to allow out of service time for the 125 VDC Motor Control Center "DC-2" to 7 days. The current Technical Specification requires that the plant be shut down within 30 hours if the 125 VDC Motor Control Center "DC-2" becomes unavailable.

Basis for proposed no significant hazards consideration determination: In accordance with 10 CFR 50.92, GPU Nuclear has determined that operation of the Oyster Creek Nuclear Generating Station in accordance with the proposed technical specifications does not involve a significant hazard. The change does not:

1. Involve an increase in the probability or consequences of an accident previously evaluated. Increasing the allowable out of service time to 7 days for the 125 VDC MCC "DC-2" does not alter the plant response to an accident nor reduce the availability of the Isolation Condenser System below that which is currently addressed in the Technical Specifications. The 125 VDC MCC "DC-2" supplies power only to the isolation valves of the Isolation Condenser System.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. Increasing the allowable out of service time for the 125 VDC MCC "DC-2" does not alter the existing plant response. The availability of plant systems is unchanged from that which is currently addressed in the Technical Specifications.

3. Involve a significant reduction in margin of safety. Changing the allowable out of service time for 125 VDC MCC "DC-2" to agree with the allowable out of service time for an inoperable Isolation Condenser System

availability and the isolation requirements associated with an inoperable condenser are currently addressed in the Technical Specifications and remain unchanged. The staff has reviewed the licensee's submittal and concurs with its no significant hazards determination.

Local Public Document Room
location: Ocean County Library,
Reference Department, 101 Washington
Street, Toms River, New Jersey 08753
Attorney for licensee: Ernest L. Blake,
Jr., Shaw, Pittman, Potts, and
Trowbridge, 2300 N Street, NW,
Washington, DC 20037.

NRC Project Director: John F. Stolz
Gulf States Utilities Company, Docket
No. 50-458, River Bend Station, Unit 1
West Feliciana Parish, Louisiana

Date of amendment request:
November 13, 1987.

Description of amendment request:
The proposed amendment would revise
Section 4.7.1.2, Surveillance
Requirements, Ultimate Heat Sink
(UHS) of the Technical Specifications
(TSs) to reflect the upgraded UHS
temperature monitoring system installed
during the first refueling outage. The
upgraded system provides temperature
indication and alarm in the main control
room and local indication. The proposed
changes to the TSs are as follows:

(1) Add a footnote to Specification
4.7.1.2.b. that specifies that the average
water temperature shall include at least
four operable temperature sensors of
which at least half shall be located
above elevation 94 feet;

(2) Clarify that the average water
temperature is the arithmetical average
water temperature;

(3) Modify specifications 4.7.1.2.b.2.
and 4.7.1.2.b.3 regarding increased
surveillance of the UHS basin water
temperature if the temperature is 75° F
or above to indicate that increased
surveillance is required when the
control room alarm is inoperable.

**Basis for proposed no significant
hazards consideration determination:**
The Commission has provided
standards for determining whether a
significant hazards consideration exists
as stated in 10 CFR 50.92(c). A proposed
amendment to an operating license for a
facility involves no significant hazards
consideration if operation of the facility
in accordance with the proposed
amendment would not: (1) involve a
significant increase in the probability or
consequences of an accident previously
evaluated; or (2) create the possibility of
a new or different kind of accident from
any accident previously evaluated; or (3)
involve a significant reduction in a
margin of safety. The licensee provided

an analysis that addressed the above
three standards in the amendment
application.

1. No significant increase in the probability
or the consequences of an accident
previously evaluated results from this change
because: The UHS basin water temperature is
monitored to assure the plant is within the
bounds of the initial conditions assumed in
the Safety Analysis and has no post accident
functions. This does not change any previous
safety analysis. The previous surveillance
intervals when the temperature exceeds 75° F
were to assure operator awareness and to
maintain the plant within the initial
conditions of the SAR. The Control Room
indication and alarm functions replace the
previous manual actions and are
supplemented by the increased surveillance
when the instrumentation is unavailable. The
addition of the minimum equipment to
implement the surveillance is to assure a
representative indication of basin
temperature to confirm the basin temperature
is within the initial conditions of the Safety
Analysis.

Since the system has been previously
found to support Safety Analysis and the
present Limiting Conditions for Operation
(LCO) will continue without change, no
increase in the probability or consequences
of an accident previously evaluated results
from this change.

2. This change would not create the
possibility of a new or different kind of
accident from any accident previously
evaluated because: The system has been
found to support the functions assumed in the
Safety Analysis Report (SAR) and the use is
functionally identical to the original design
with the enhancements of remote indications
and an alarm. A review of Regulatory Guide
1.47, NUREG-0800 and other available
information found no specific requirements
for UHS temperature monitoring. Since the
monitoring of the temperature exceeds the
guidance and the proposed surveillance
establishes additional assurance, the plant
will respond as described in the SAR. In
addition, the LCO and Actions required by
the TS are unchanged. Thereby maintaining
the UHS operation and performance within
all accident conditions previously evaluated.

3. This change would not involve a
significant reduction in the margin of safety
because: The UHS temperature is maintained
within the present safety analysis by the new
system and the specific requirement of
monitoring the heat sink temperature will be
maintained by the once per 24 hour
surveillance requirements. The temperature
received by the operators will conservatively
reflect the actual water temperature. The
configuration of the sensors even when at the
minimum number will indicate a temperature
which is above the true average. Therefore,
the design and surveillance requirements are
conservative with respect to the safety
analysis. In addition, this change does not
reduce the margin of safety identified in the
Bases in the River Bend Technical
Specifications.

The proposed amendment, as discussed
above, has not changed the system design,
function and operation contained in the SAR
and therefore, will not increase the

probability or the consequences of a
previously evaluated event or will not create
a new or different event. Since the ability to
perform, as described in the SAR, is
maintained by this change, the proposed
change does not result in a significant
reduction in the margin of safety. Gulf States
Utilities proposes that no significant hazards
are involved.

The staff has reviewed the licensee's
no significant hazards consideration and
agrees with the analysis.

Local Public Document Room
location: Government Documents
Department, Louisiana State University,
Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner,
Jr., Esq., Conner and Wetterhahn, 1747
Pennsylvania Avenue, NW.,
Washington, DC 20006

NRC Project Director: Jose A. Calvo

Illinois Power Company, Docket No. 50-
461, Clinton Power Station, Unit 1,
DeWitt County, Illinois

Date of application for amendments:
October 30, 1987

Description of amendments request:
These amendments would revise
Technical Specification Sections 6.3, 6.4,
6.8.2 and 6.8.3.c, and Figures 6.2.1-1 and
6.2.2-1 in order to achieve consistency
with previously approved changes or to
update or clarify existing requirements.
Technical Specification 6.3 currently
specifies an exemption to ANSI/ANS
3.1-1978 Section 4.4.2 "Instrumentation
and Control" qualification requirements
for the Clinton Supervisor - Control and
Instrumentation. The exemption should
be deleted since this individual now fills
the position of Supervisor - Control and
Instrumentation and fully meets the
ANSI/ANS 3.1-1978 qualification
requirements. Technical Specification
6.3 currently specifies the title
"Radiation Protection Supervisor". This
title was previously changed to
"Director - Radiation Protection" during
the licensing process. Thus the phrase
"and the Radiation Protection
Supervisor" should be deleted in order
to be consistent with the previously
approved change. The last sentence of
Specification 6.3 should also be deleted
since it has been superseded by the 1987
version of 10 CFR 55, "Operators
Licenses". Specification 6.4 should also
be modified in order to delete material
that has been superseded by the 1987
version of 10 CFR 55. The requirements
of the March 28, 1980 letter were
incorporated as appropriate into the
1987 version of 10 CFR 55. Specification
6.4 and Figure 6.2.1-1 should be revised
in order to reflect a recent management
change by the utility where the position
of Director - Nuclear Training was
upgraded to Manager - Nuclear Training.

In addition, the word "Operations" under the Manager - Scheduling and Outage Management should be replaced with the word "Staff" in Figure 6.2.1-1 in order to be consistent with the rest of the organization chart. Technical Specifications 6.8.2 and 6.8.3.c currently state that each procedure of Specification 6.8.1, and changes thereto (including temporary changes), shall be "approved by the Power Plant Manager." However, not all of the procedures that meet the criteria of Specification 6.8.1 are Plant Staff procedures; some procedures are associated with support organizations or programs for which managers other than the Power Plant Manager are directly responsible. Thus the words "Power Plant Manager" should be replaced in Specifications 6.8.2 and 6.8.3.c with the words "appropriate responsible manager" in order to clarify the requirements for approval of these procedures. Since the Power Plant Manager has overall responsibility for operation of the facility, his signature for concurrence, as a minimum, would still be required. Figure 6.2.2-1 currently uses asterisks to indicate qualification requirements for various unit staff personnel. These asterisks could be deleted since the qualifications are addressed in Specification 6.3 and in Chapter 13 of the FSAR. This proposed change does not affect the utility's commitments regarding the qualifications and training of unit staff personnel. Also, the positions of Director - Plant Maintenance and Assistant Manager - Startup should be deleted from Figure 6.2.2-1 due to an organizational restructuring.

Basis for Proposed No Significant Hazards Consideration Determination: The staff has evaluated these proposed amendments and determined that they involve no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the amendment would not:

- (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
- (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
- (3) Involve a significant reduction in a margin of safety.

These proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because these changes are administrative in nature. These changes do not affect any previous analyses nor do they alter the

intent or implementation of the applicable Technical Specifications.

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes are administrative in nature and thus do not affect the plant design or operation.

The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes are administrative in nature and thus do not alter the intent of the existing Technical Specification requirements. The proposed changes do not impact plant design and therefore do not affect a margin of safety.

For the reasons stated above, the staff believes these proposed amendments involve no significant hazards considerations.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zable, Esq., of Schiff, Hardin & Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

NRC Project Director: Daniel R. Muller

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendments: October 30, 1987

Description of amendments request: These amendments would revise Technical Specification Sections 3.4.2.2, 3.9.12 and 6.9.1.8, Figure 3.2.3-1, and Tables 3.3.2-1 and 3.3.7.1-1 in order to achieve consistency with previously approved changes or to clarify existing requirements. Technical Specification 3.4.2.2 currently specifies a tolerance of $\pm 2\%$ for the Low-Low Set Function Setpoint associated with the safety/relief valves (SRVs). However, the General Electric (GE) design specifications specify a tolerance of ± 15 psi, which represents a tighter tolerance than the current value of $\pm 2\%$ and is the value specified in the plant calibration procedure. Thus the tolerance specified in the "Low-Low Set Function Setpoint" column in Technical Specification 3.4.2.1 should be changed from " $\pm 2\%$ " to " ± 15 psi" in order to be consistent with current design specifications and plant calibration procedures. The footnote to Technical Specification 3.9.12 currently contains wording from the Low Power Operating License regarding the transfer of irradiated fuel from the reactor vessel. This wording should be revised in order to be consistent with the current wording contained in License Condition

2.D.(b) of the Full Power Operating License. Technical Specification 6.9.1.8, "Monthly Operating Reports", should be revised in order to be consistent with the 1987 update to 10 CFR 50.4 "Written Communications" which changed the address to which these reports are to be sent. Figure 3.2.3-1 (MCPR_r Versus Core Flow) contains graphical errors. There are small but noticeable differences between the plotted values of Required MCPR_r versus Core Flow (% Rated) and the values determined from the process computer equations. A more accurate figure for determining the minimum required MCPR_r (as a function of core flow) is required in order to clarify existing requirements. Actions 21, 25, and 29 for Technical Specification 3.3.2, Table 3.3.2-1, which are applicable to Item 3.e of the table, were revised in the Clinton Full Power License Technical Specifications. These approved changes consisted of applying Action 29 to Item 3.e for Operational Conditions 1, 2, and 3 and applying Action 25 to Item 3.e for Operational Condition "4". These Actions were to replace Action 21. Thus, the Action numbers identified for Item 3.e (Reactor Vessel Water Level - Low Low, Level 2 channels for Reactor Water Cleanup System isolation) should be revised in order to be consistent with the approved changes documented in Appendix Q of Supplement 8 to the Clinton Safety Evaluation Report. Part "a" of Action 70 of Technical Specification Table 3.3.7.1-1 currently erroneously states, "with one of the required monitors inoperable, place the inoperable channel in the (downscale) tripped condition within 1 hour..." Since a trip can be effected in a number of ways, including disconnecting the detector (which is essentially equivalent to a downscale trip) or interrupting power to the monitor, the word "downscale" and the associated parenthesis should be deleted in order to avoid confusion. Part "b" of Action 70 currently erroneously uses the term "recirculation" in describing the mode of operation initiated by an air intake high radiation condition. This term is misleading since several of the modes of operation specified in Technical Specification 3/4.7.2 involve a recirculation path. The high radiation mode, as referred to in Specification 4.7.2.e.5, is the mode of operation initiated by a high radiation condition sensed by the air intake radiation monitors. Thus "recirculation" should be replaced by "high radiation" in order to avoid confusion.

Basis for Proposed No Significant Hazards Consideration Determination: The staff has evaluated these proposed

amendments and determined that they involve no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the amendment would not:

- (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
- (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
- (3) Involve a significant reduction in a margin of safety.

These proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated. These changes do not affect any previous analyses nor do they alter the intent or implementation of the applicable Technical Specifications. The proposed change to Specification 3.4.2.2 establishes conformance with the GE design specification values specified for the setpoint tolerance of the Safety/Relief Valve Low-Low Set function. The proposed change to Specification 3.9.12 is an administrative change which reflects the revised wording of this license condition in the Full Power License from that in the Low Power Operating License. The proposed change to Specification 6.9.1.8 is an administrative change which reflects the 1987 update to 10 CFR 50.4. The proposed change to Figure 3.2.3-1 does not involve a significant increase in the probability or consequences of an accident previously evaluated since no changes to the MCPR analyses and the associated required MCPR_r limits are involved. The purpose of this change is to clarify existing requirements by providing a more accurate figure for determining the minimum required MCPR_r (as a function of core flow). Past performance under the existing figure has been acceptable since the proposed curve bounds all of the values that could possibly be determined from the original figure. The proposed change to Table 3.3.2-1 is an administrative change in order to achieve consistency with previously approved changes in the Full Power License Technical Specifications. The proposed change to Table 3.3.7.1-1 is an administrative change that clarifies but does not change the intent of the Specification.

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. None of the changes affects the plant design or operation. The proposed change to Specification 3.4.2.2, changing the tolerance for the Low-Low

Set Function Setpoint associated with the SRVs to match the intended design value, does not create a new accident scenario. The proposed changes to Specifications 3.9.12 and 6.9.1.8 and Tables 3.3.2-1 and 3.3.7.1-1 are administrative changes that do not create a new accident scenario. The proposed change to Figure 3.2.3-1 is limited to the correction of graphical errors and the clarification of existing requirements and does not involve any design changes, new requirements, or new modes of operation. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not involve a significant reduction in a margin of safety. The intent of the existing Technical Specification requirements would remain unchanged. The proposed change to Figure 3.2.3-1 does not involve a significant reduction in a margin of safety because the MCPR analysis remains unchanged and because the new curve allows the determination of a MCPR_r limit that is still consistent with the analysis. No setpoint, design or analytical limit assumed or required by any analysis is affected by this change. The other proposed changes are administrative changes that do not affect a margin of safety.

For the reasons stated above, the staff believes these proposed amendments involve no significant hazards considerations.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zable, Esq., of Schiff, Hardin & Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

NRC Project Director: Daniel R. Muller

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1 DeWitt County, Illinois

Date of application for amendments: October 30, 1987

Description of amendments request: These amendments would revise Technical Specification Sections 3.4.1.1 and 4.6.6.3 and Tables 3.3.2-1, 3.3.7.4-1 and 3.6.4-1 in order to correct typographical errors and to clarify existing requirements. Action a.1.g under Specification 3.4.1.1 currently erroneously refers to Surveillance Requirement 4.4.1.1.2 instead of 4.4.1.1.4. Surveillance Requirement 4.6.6.3.c currently erroneously contains the heading "Make Up Filter System" which is not applicable to the Standby Gas Treatment System. Table 3.3.2-1

currently refers to note "(a)" after the column heading "Minimum Operable Channels per Trip System". Since note "(a)" is only applicable in some cases, the "(a)" should be removed from the column heading and placed adjacent to the trip channels having a "2" listed in this column. Table 3.3.7.4-1 currently erroneously identifies the Remote Shutdown Panel upper and lower drywell temperature instruments as 1C61-R502 and 1C61-R501, respectively. These instrument equipment numbers should be transposed to correct this typographical error. Table 3.6.4-1 currently inadvertently repeats the maximum isolation time value (41 seconds) twice for valve 1E51-F064. The extra "41" should be deleted to correct this typographical error. There are three typographical errors associated with Note (a) of Table 3.6.4-1. Since Note (a) is applicable to all of the test connection, vent and drain valves and their corresponding applicable Operational Conditions listed in Table 3.6.4-1, Note (a) can be attached to the "Test Connections, Vents, and Drains" heading rather than to each applicable Operational Condition number or symbol listed for every valve. The wording of Note (a) should be modified by adding "during applicable OPERATIONAL CONDITIONS" to clarify that the note is applicable during any and all of the applicable Operational Conditions for these valves. The heading "Test Connections, Vents, and Drains" currently erroneously has Note (b) attached to it where it is intended to insert Note (a). This is a typographical error since Note (b) does not apply to the test connection, vent and drain valves.

Basis for Proposed No Significant Hazards Consideration Determination: The staff has evaluated these proposed amendments and determined that they involve no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the amendment would not:

- (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
- (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
- (3) Involve a significant reduction in a margin of safety.

These proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because these changes do not affect any previous

analyses nor do they alter the intent or implementation of the applicable Technical Specifications. The purpose of these changes is to clarify existing requirements by correcting existing typographical errors.

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated because the scope of these proposed changes is limited to the correction of typographical errors and the clarification of existing requirements. None of the changes affects the plant design or operation.

The proposed changes do not involve a significant reduction in a margin of safety because no setpoint, design or analytical limit assumed or required by any analysis is affected by these proposed changes. The intent of the existing Technical Specification requirements would remain unchanged since the proposed changes would only correct typographical errors.

For the reasons stated above, the staff believes these proposed amendments involve no significant hazards considerations.

Local Public Document Room
location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zable, Esq., of Schiff, Hardin & Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

NRC Project Director: Daniel R. Muller

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendments: October 30, 1987

Description of amendments request: These proposed amendments would revise Technical Specification Sections 3.6.1.4 and 3.6.4 and Table 3.6.4-1. The proposed change to Specification 3.6.1.4 consists of the addition of a provisional footnote to the operability requirements specified in the Limiting Condition for Operation for the MSIV Leakage Control System (MSIV-LCS). This note, which is only applicable to MSIV-LCS instrumentation, states that "An MSIV leakage control system instrumentation channel may be placed in an inoperable status for up to 2 hours for required surveillance without placing the channel in the tripped condition provided the other channel or channels monitoring that parameter are OPERABLE." Illinois Power Company has proposed a plant modification to add test connections upstream of certain excess flow check valves (1CM002B, 1SM008, 1SM011, 1E22-F332, 1E51-F377B) in order to

facilitate the testing of these valves as required by Technical Specification 4.6.4.4. The new test connections to be added would contain isolation valves which must be added to the Test Connections, Vents and Drains section of Table 3.6.4-1. In order to ensure compliance with the Technical Specifications, and yet provide some flexibility in the schedule for completing the modification, Illinois Power Company has proposed that footnotes be added to pages 3/4 6-29 and 3/4 6-61 to allow the proposed Technical Specification changes to become effective once the modification is complete. At that time, the operability requirements and provisions of the Technical Specifications would be in effect for the subject valves.

Basis for Proposed No Significant Hazards Consideration Determination: The staff has evaluated these proposed amendments and determined that they involve no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the amendment would not:

- (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
- (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
- (3) Involve a significant reduction in a margin of safety.

These proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated nor do they alter the intent or implementation of the applicable Technical Specifications. The proposed amendment to Specification 3.6.1.4 does not involve a significant increase in the probability or consequences of an accident previously evaluated because the change to the operability requirements for the MSIV-LCS instrumentation has negligible impact on the availability of the system based on the premise, as stated in IEEE 279, that the time allowed for the channel under test to be inoperable is so short that the probability of failure of the active channel(s) would be commensurate with the probability of failure of all redundant system channels during the normal interval between tests. Because the proposed change has no significant impact on the design or operability of the system, the system will remain fully capable of performing its function to mitigate the consequences of the accident for which it was designed. The licensee has stated the following

reasons why the proposed changes to Specification 3.6.4 and Table 3.6.4-1 do not involve a significant increase in the probability or consequences of an accident previously evaluated:

(a) With respect to maintaining containment integrity, the addition of the test connections supports testing required to verify the capability of the excess flow check valves to check the flow at a particular differential pressure assumed for accident conditions;

(b) The added test connections are double-valved, capped, and meet the applicable design/safety requirements in order to ensure containment integrity;

(c) Adding the valves to Table 3.6.4-1 also makes all of the applicable Technical Specification requirements associated with containment integrity applicable to the new valves as well; and

(d) The addition of the test connections does not affect the functional characteristics of the excess flow check valves and therefore does not affect operation of the associated systems.

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated, nor do they affect plant design or operation. The proposed change to Specification 3.6.1.4 only applies to the MSIV-LCS system and it does not significantly impact the operability of this system. The proposed changes to Specification 3.6.4 and Table 3.6.4-1 concern the addition of test connections upstream of certain excess flow check valves. The licensee determined that this change should be evaluated with respect to containment integrity and the operability of the excess flow check valves, including their impact on the associated systems (Containment Monitoring, Suppression Pool Makeup, High Pressure Core Spray and Reactor Core Isolation Cooling). Since this impact had already been evaluated by the licensee, no further consideration of a new or different kind of accident is required.

The proposed changes do not involve a significant reduction in a margin of safety. The proposed change to Specification 3.6.1.4 does not affect the actuation instrumentation trip setpoints. Also, under the current action statement, an inoperable MSIV-LCS subsystem must be returned to operable status within 30 days. If not, the plant must be in hot shutdown within the next 12 hours and cold shutdown within the following 24 hours. Thus, the time allowed for the channel to be inoperable for testing (subject to the provisions of the note) is insignificant relative to the

out-of-service time allowed for the subsystem under the action statement. The proposed changes to Specification 3.6.4 and Table 3.6.4-1 do not involve a change to any trip setpoints, analytical values, or design limits required or assumed in any safety analysis.

For the reasons stated above, the staff believes these proposed amendments involve no significant hazards considerations.

Local Public Document Room location: The Vespaian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zable, Esq., of Schiff, Hardin & Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

NRC Project Director: Daniel R. Muller

Louisiana Power and Light Company,
Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request:
December 11, 1987

Description of amendment request:
The proposed change revises Technical Specification 3.3.3.8, Fire Detection Instrumentation, and its associated Table 3.3-11, to change the number of detection instruments and zones of detection providing indication of fire in the annulus. This Technical Specification (TS) change will implement a proposed change in method of fire detection for the annulus wherein the current system will be replaced with fire detection instruments mounted on the Annulus Negative Pressure System (ANPS) ductwork.

The proposed change to Table 3.3-11 consists of reducing the number of Function A detection instruments from 69 to two, the number of zones from two to one; and indicating detection at elevation +46 only. Further, a footnote will be added to the table to clarify that the fire detection instruments for the annulus are physically installed on the ANPS ductwork in the RAB. The change to Statement c of TS 3.3.3.8 does not change the intent of the statement, but rather modifies the wording to be consistent with the proposed system configuration. As a result of moving the detection instruments to a location outside the annulus, the surveillance interval requirements of TS 4.3.3.8.1 and 4.3.3.8.2 will change from "each COLD SHUTDOWN exceeding 24 hours unless performed in the previous 6 months" to "at least once per 6 months." However, this occurs within the context of the existing surveillance requirement language.

The existing annulus fire detection system consists of 69 ionization type smoke detectors circling the annulus in three vertical loops at elevations -4, +21 and +46. These three loops comprise two zones of detection for alarm purposes. The proposed fire detection system consists of two photoelectric smoke detectors mounted on the ANPS ductwork with sample tubes penetrating into the duct. The ANPS operates continuously during normal plant operation to maintain the annulus negative pressure greater than five inches water gauge in accordance with TS 3.6.6.2. A number of alternatives to the existing system were evaluated by the licensee, and the duct mounted detectors were determined to be the best choice for this application. In addition to providing an adequate level of fire protection for the annulus:

1. The detectors will be accessible during all modes of operation;
2. Entries into the annulus will not be required except for fire watch patrols in the event of loss of operability of the detectors; and
3. Surveillances will be more easily performed, and without the personnel hazards associated with scaling the annulus wall.

Basis for proposed no significant hazards consideration determination:
The NRC staff proposes to determine that the proposed change does not involve a significant hazards consideration. As required by 10 CFR 50.92(c), a proposed change to an Operating License involves no Significant Hazards Consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis from this proposed finding is given below.

(1) The probability of a previously evaluated accident will not be significantly increased because the proposed change will not alter conditions within the annulus. Neither will there be an increase in the consequences of a previously evaluated accident as the proposed change will still provide adequate fire detection capability for the annulus. In particular, the intake duct of the ANPS is located directly above the electrical penetrations traversing the annulus, thereby insuring that the level of fire protection maintained for the annulus is commensurate with the attendant hazards.

(2) The proposed change maintains fire detection capability for the annulus when a fire watch is not required. It is only the method and configuration that is changed, and this method was demonstrated to provide detection capability during a field test of a mock-up system. No combustible or ignition sources are introduced by the change. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change preserves the capability to detect fire in the annulus. In addition, the proposed change will increase system reliability through the elimination or significant reduction in spurious alarms, and the accessibility of detection instruments for maintenance activities and surveillance testing. Therefore, the proposed change will not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration analysis. Based on the review and above discussions, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Maine Yankee Atomic Power Company,
Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment:
January 6, 1988

Description of amendment request:
The proposed amendment would modify the Technical Specifications to update Figure 5.2-1 and Figure 5.2-2 in Technical Specification 5.2 "Organization" depicting the Maine Yankee Atomic Power Company offsite and facility organization, respectively.

Basis for proposed no significant hazards consideration determination:
The proposed changes to the Technical Specifications to depict the revisions to the organizational structures and title nomenclature have been evaluated against the standards of 10 CFR 50.92 and have been determined to not involve a significant hazards consideration. These proposed changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change to the organizational charts in TS 5.2 are administrative in nature and have no effect on the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

Since there are no changes in plant design or operation, inclusion of the proposed changes in the technical specifications would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

For the reasons previously stated, adoption of the proposed change would not involve a significant reduction in safety margin for the plant.

Maine Yankee has concluded that the proposed changes to the Technical Specifications do not involve a significant hazards consideration as defined by 10 CFR 50.92. We have reviewed the licensee's analysis and have agreed with it. Accordingly, the Commission proposes to determine that this change does not involve a significant hazard.

Local Public Document Room location: Wiscasset Public Library, High Street, P. O. Box 267, Wiscasset, Maine 04578.

Attorney for licensee: J. A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Project Director: Richard H. Wessman, Acting Director

Pennsylvania Power and Light Company, Docket No. 50-388
Susquehanna Steam Electric Station,
Unit 2, Luzerne County, Pennsylvania

Date of amendment request:
December 23, 1987

Description of amendment request:
The proposed amendment would revise the Susquehanna Steam Electric Station, Unit 2 Technical Specifications in support of the forthcoming fuel reload for Cycle 3 operation. Specifically, the licensee has requested to change the following parts of the Technical Specifications:

- Technical Specifications Index
- Specification 3/4.2.1 related to Average Planar Linear Heat Generation Rate
- Specification 3/4.2.2 related to APRM Setpoints
- Specification 3/4.2.3 related to Minimum Critical Power Ratio
- Specification 3/4.2.4 related to Linear Heat Generation Rate

- Specification 3/4.3.6 related to Control Rod Block Instrumentation
 - Specification 3/4.4.1 related to Recirculation System
 - Specification B 2.1 related to Safety Limits
 - Specification B 3/4.2.1 related to Average Planar Linear Heat Generation Rate
 - Specification B 3/4.2.2 related to APRM Setpoints
 - Specification B 3/4.2.3 related to Minimum Critical Power Ratio
 - Specification B 3/4.4.1 related to Recirculation System
- Basis for proposed no significant hazards consideration determination:*
The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusions provided by the licensee in its December 23, 1987 submittal.

The following three questions are addressed for each of the proposed Technical Specification changes:

I. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

II. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

III. Does the proposed change involve a significant reduction in a margin of safety?

• *Specification 3/4.2.1, Average Planar Linear Heat Generation Rate*
The changes to this specification reflect editorial changes to correct misarranged wording that was issued with Amendment 31, and the replacement of references to "Exxon" with "ANF." A change to increase the allowed exposure for GE 2.33% enriched fuel to 40.675 MWD/MTU is also proposed.

I. No. The editorial changes to correct misarranged wording and the vendor reference are wholly editorial in nature and therefore have no impact on any safety analysis.

The change to the GE limit is based on a GE LOCA analysis. This new curve

was previously approved by the NRC in Amendment 64 to the Unit 1 Operating License, it is a fuel-dependent limit, and is being applied to the same type of GE fuel in this Unit 2 proposal. As stated in the staff safety evaluation for Amendment 64, "The resulting peak cladding temperature (PCT) limit and local oxidation fraction were calculated by GE based on the same plant conditions and systems analysis used to derive the current MAPLHGR limits defined in the SSES PSAR. The calculated values are well within the 10 CFR 50.46 Appendix K limits." These conclusions still apply.

II. No. The editorial changes cannot create new concerns; based on the methods and results of the GE analysis discussed above, no new events are postulated due to the extended burn-up limit.

III. No. The editorial changes have no safety impact. The previously approved methods and results of the GE analysis ensure that the margin of safety is not reduced due to the change in the GE fuel MAPLHGR limit.

• *Specification 3/4.2.2, APRM Setpoints*
All proposed changes to this specification are editorial.

I. No. The proposed changes correct the vendor reference from "Exxon" to "ANF." This has no impact on safety analyses since it is entirely administrative in nature.

II. No. See I above (vendor reference change is unlikely to create a possibility of a new or different kind of accident from any previously evaluated);

III. No. See I above (vendor reference change is unlikely to involve a significant reduction in a margin of safety).

• *Specification 3/4.2.3, Minimum Critical Power Ratio*
The changes to this specification reflect the results of the cycle-specific transient analyses.

I. No. Limiting core-wide transients were evaluated with ANF's COTRANSA code and this output was utilized by the XCOBRA-T methodology to determine delta CPRs. Both COTRANSA and XCOBRA-T have been approved by the NRC in previous license amendments. All core-wide transients were analyzed deterministically (i.e., using bounding values as input parameters).

Two load events, Rod Withdrawal Error and Fuel Loading Error, were analyzed in accordance with the methods described in XN-NF-80-19 (A) Vol. 1. This methodology has been approved by the NRC.

Based on the above, the methodology used to develop the new operating limit MCPRs for the Technical Specifications does not involve a significant increase

in the probability or consequences of an accident previously evaluated.

II. No. The methodology described can only be evaluated for its affect on the consequences of analyzed events; it cannot create new ones. The consequences of analyzed events were evaluated in I above.

III. No. As stated in I above, and in greater detail in the attached Summary Report, the methodology used to evaluate core-wide and local transients is consistent with previously approved methods and meets all pertinent regulatory criteria for use in this application. Therefore, its use will not result in a significant decrease in any margin of safety.

• *Specification 3/4.2.4, Linear Heat Generation Rate* All proposed changes to this specification are editorial.

I. No. The proposed changes correct the vendor reference from "Exxon" to "ANF." This has no impact on safety since it is entirely administrative in nature.

II. No. See I above (vendor reference change is unlikely to create the possibility of a new or different kind of accident from any previously evaluated).

III. No. See I above (vendor reference change is unlikely to involve a significant reduction in a margin of safety).

• *Specification 3/4.3.6, Control Rod Block Instrumentation* The proposed change to this specification is editorial and was previously submitted to the NRC via proposed amendment 52, dated June 30, 1987.

I. No. The proposed change restores footnote "" to Trip Function 2a. This footnote was always meant to apply in this location. This change has no impact on safety since it is entirely editorial in nature.

II. No. See I above (vendor reference change is unlikely to create the possibility of a new or different kind of accident from any previously evaluated).

III. No. See I above (vendor reference change is unlikely to involve a significant reduction in a margin of safety).

• *Specification 3/4.4.1, Recirculation System*

a. Two Loop Operation: The changes to these requirements are due to the cycle specific stability analysis. The new analysis resulted in a varying "detect and suppress" region flow boundary, which in turn resulted in the need for the editorial changes to the action statements.

I. No. CONTRAN core stability calculations performed for U2C3 predict stable reactor operation outside of the

detect and suppress region of operation in SSES Unit 2. The detect and suppress region is defined by the area above and to the left of the 80% Rod Block line, the 45% constant flow line, and the line connecting the 66% Power/45% Flow, 69% Power/47% Flow points extrapolated to the APRM Rod Block line. Operation outside or on the boundary of this region is supported by COTRAN calculations which result in decay ratios of less than or equal to 0.75 as required by the NRC SER on COTRAN. This region is slightly larger than the region previously specified for SSES Unit 2. The results of this analysis are presented in Summary Report Reference 4 (see licensee's December 23, 1987 application). PP&L has performed a stability startup test in SSES Unit 2 during initial startup of Cycle 2 to demonstrate stable reactor operation with ANF 9X9 fuel. The test results (see Summary Report Reference 7) show very low decay ratios with a core containing 324 ANF 9X9 fuel assemblies.

Based on the above, operation within the limits specified by the proposed Technical Specifications will not significantly increase the probability or consequences of unstable operation.

II. No. The methodology described above can only be evaluated for its (e)ffect on the consequences of unstable operation; it cannot create new events. The consequences were evaluated in I above.

III. No. The methodology used to determine the regions of potentially unstable operation and stable operation were based on the guidance provided in the NRC SER for COTRAN. Also, SSES Unit 2 Technical Specifications have implemented surveillances for detecting and suppressing power oscillations. This along with the tests and analyses described in I above assures SSES Unit 2 complies with General Design Criteri(on) 12, Suppression of Reactor Power Oscillations. Therefore, the proposed change will not result in a significant decrease in safety margin.

b. Single Loop Operation: The proposed changes reflect the changes submitted in support of Cycle 2 operation (reference proposed amendment 52 to License No. NPF-22, dated June 30, 1987), which is still pending with the NRC. The only change not explicitly evaluated in that submittal was the cycle-specific single loop MCPR limit, and an administrative change to the Single Loop Operation (SLO) figure on Thermal Power Limitations.

I. No. The new MCPR limit is a result of the SLO analysis discussed in the attached ANF report, ANF-87-125. The 0.01 MCPR penalty during SLO is still proposed. The change to the figure

number is entirely editorial in nature and therefore has no impact on safety.

II. No. See I above (editorial change is unlikely to create a possibility of a new or different kind of accident from any previously evaluated).

III. No. See I above (editorial change is unlikely to involve a significant reduction in a margin of safety).

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Walter R. Butler

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: August 6, 1987, as revised December 16, 1987.

Description of amendment request: The proposed amendment would revise the Bases for Technical Specification (TS) Section 3/4.4.6.2 regarding Pressure Boundary Leakage by deleting the provision for continued plant operation, and by adding a statement requiring that the unit be placed promptly in cold shutdown following the occurrence of Pressure Boundary Leakage. The proposed language is consistent with that of the Westinghouse Standard Technical Specifications (W-STS) and resolves an editorial inconsistency between B 3/4.4.6.2 and the definition of Pressure Boundary Leakage as defined in TS Section 1.16.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety. The Commission has also provided guidance concerning the application of these standards by providing certain examples (March 6, 1986, 51 FR 7751). An example of an amendment that is considered not likely to involve a significant hazards considerations is Example (i) is a purely administrative change to technical

specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

1. The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change corrects an internal inconsistency in the TS. It does not propose a plant modification or any change in the way the Trojan Nuclear Plant is to be operated. The probability or consequences of an accident are unaffected because the TS will continue to require that leakage (except steam generator tube leakage) through a nonisolable fault in an RCS component body, pipe wall or vessel wall, be classified as Pressure Boundary Leakage.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

The possibility of a new or different kind of accident is not created by this change, because it corrects an inconsistency in the TS. Changing the Bases to TS 3/4.4.6.2 to be consistent with the definition in TS Section 1.16 is an administrative change that does not result in any change to the facility, and does not alter the TS requirement to shut down the unit in the event of Pressure Boundary Leakage.

3. The proposed change would not involve a significant reduction in a margin of safety.

The proposed change does not alter a margin of safety because the TS will continue to require prompt reactor shutdown upon occurrence of Pressure Boundary Leakage. This change eliminates potential confusion caused by the wording of TS Bases 3/4.4.6.2 which provides for continued Plant operation if Pressure Boundary Leakage is isolated. It is incorrect to refer to RCS leakage that can be isolated as Pressure Boundary Leakage. This change merely corrects that error.

The proposed change is an editorial change to achieve consistency within the Technical Specifications, and is considered to fall within the scope of the Commission's Example (i) cited above.

The staff has reviewed the licensee's no significant hazards analysis and concurs with their conclusions. As such, the staff proposes to determine that the requested change does not involve a significant hazards consideration.

Local Public Document Room location: Portland State University

Library, 731 S. W. Harrison St., Portland Oregon 97207

Attorney for licensee: J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S. W. Salmon Street, Portland, Oregon 97204

NRC Project Director: George W. Knighton

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: May 15, 1987 (TS 229)

Description of amendment requests: Tennessee Valley Authority proposes to modify the Browns Ferry Nuclear Plant, Units 1, 2 and 3 Technical Specifications to delete the requirement to perform a partial closure test on the main steam isolation valves (MSIVs) denoted in Surveillance Requirement 4.7.D.1.c. Deletion of the test requirement would allow the partial closure test to be performed quarterly, consistent with the requirement denoted in Table 4.1.A for the Reactor Protection System (RPS) scram on MSIV closure, rather than the twice per week test currently specified. Since 1977, the Browns Ferry Nuclear Plant has experienced five scrams attributable to equipment used during this test. The proposed change would remove excessive testing requirements for the MSIVs and decrease the probability of accidental plant transients caused during the performance of the surveillance test.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The licensee addressed the above three standards in the amendment application and has determined that the proposed change:

1. Would not involve a significant increase in the probability or consequence of an accident previously evaluated. The proposed change to eliminate Surveillance Requirement 4.7.D.1.c discusses the frequency of partial closure surveillance testing of the MSIVs. However, the decrease in surveillance is limited by the

requirement to perform a quarterly test to partially close the MSIVs consistent with the requirements in Table 4.1.A [Reactor Protection System (Scram) Instrumentation Functional Test Minimum Functional Test Frequencies For Safety Instrumentation and Control Circuits]. The decrease in testing frequency is offset by the decrease in the probability of inadvertent scrams and plant transients. The MSIVs have demonstrated a high degree of reliability in closing and failure of the mechanical portion of the valve has not been a dominant failure mode. This proposed change does not result in any modification to the plant or system operation and no safety-related equipment or function would be altered.

2. Would not create the possibility of a new or different kind of accident from any accidents previously evaluated. As stated in (1) above, the proposed change only decreases the frequency for partial closure testing from twice per week to once per quarter which is offset by the increase in plant safety. The proposed change does not modify any plant equipment, provide any new operational conditions, or create any new accident modes.

3. Would not involve a significant reduction in a margin of safety. The proposed change to reduce the frequency of partial closure testing of the MSIVs from twice per week to quarterly would decrease the probability of accidental transients which have previously occurred during the performance of this test. The proposed change is consistent with the guidance provided in NUREG-0737, Item II.K.3.16, which indicates that one way to reduce challenges to the relief valves is by reducing MSIV testing.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based on the review and the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Gary G. Zech

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: October 16, 1987 (TS 236)

Description of amendment requests:

The proposed amendments would modify the Technical Specifications (TS) of Browns Ferry Nuclear Plant, Units 1, 2 and 3 to:

A. Require that primary containment isolation valves be operable whenever primary containment integrity is required to be maintained.

B. Permit a primary containment isolation valve(s) to be inoperable for up to 4 hours without placing a redundant valve in the isolated position provided that at least one isolation valve in the same line is operable.

C. Revise the definition 1.0.0.3, Primary Containment Integrity, to be consistent with Item B.

Basis for proposed no significant hazards consideration determination:

The Commission has provided Standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 50.92, the licensee has performed and provided the following analysis.

1. This proposed amendment does not involve an increase in the probability or consequences of an accident previously evaluated. (A) The change to increase the requirements for having the primary containment isolation valves operable for all the operating conditions when primary containment integrity is required, rather than just during reactor power operation, is an upgrade in required valve operability which does not influence the probability of any accident initiating events. The consequences of any accident previously evaluated would not be increased since the primary containment isolation valves would still be operable for isolating any previously analyzed release pathway. (B) The action to specify a time period (four hours) for a primary containment isolation valve(s) to be inoperable without placing a redundant isolation valve in the isolated position, provided that a redundant isolation valve is operable, would not involve a significant increase in the probability or consequences of an accident previously evaluated. This change does not influence the probability of any accident initiating event. In order for the change to result in adverse consequences to the plant, all of the following events would have to occur sequentially within a four hour time period:

a. A primary containment isolation valve would have to be declared inoperable and be in an unisolated state.

b. An accident would have to occur which would require the isolation of the primary containment.

c. The second primary containment isolation valve in the affected line would

have to suffer a failure which would leave it in an unisolated state.

This sequence of events is considered to be highly improbable. The probability of an accident and a single failure of the operable primary containment isolation valve occurring during the four hour time period is negligible. This change is consistent with Technical Specifications recently approved for other facilities. (C) The change to the definition of primary containment integrity has no impact on the probability of consequences of an accident as described in B above.

2. (A) The possibility of a new or different kind of accident from an accident previously evaluated is not created by conservatively requiring the primary containment isolation valves be operable over a broader range of operating conditions.

(B) and (C) This Technical Specification change will still require one operable primary containment isolation valve be available to mitigate the consequences of an accident. Reliance on a single operable isolation valve for a short (four hour) time frame is sufficient to assure the affected line will isolate as previously analyzed. Allowing a primary containment isolation valve to be inoperable for four hours does not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. (A) The TS revision will broaden the operating conditions under which primary containment isolation valves are required to be operable. This change does not affect any margin of safety.

(B) and (C) The change to allow a primary containment isolation valve to be inoperable for four hours deals only with the reliability of the affected line to isolate. A safety margin is not affected if isolation of the affected line is assumed to occur as in Item 2 above.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Gary G. Zech

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: October 27, 1987 (TS 235)

Description of amendment requests: Tennessee Valley Authority proposes to modify the Browns Ferry Nuclear Plant,

Units 1, 2 and 3 Technical Specifications to reference the ASME Section XI Pump and Valve Program definition and to revise various surveillance test frequencies consistent with the specified ASME program. Existing monthly pump and valve surveillance testing frequencies were based upon earlier editions of the ASME Code which required once per month operability testing of some components. The ASME Code of record referenced in the recently committed Browns Ferry Nuclear Plant pump and valve program specifies an edition of the Code which requires these components to be tested quarterly.

*Basis for Proposed No Significant**Hazards Consideration Determination:*

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operation license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The licensee addressed the above three standards in the amendment application and has determined that the proposed change:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change would reference the new ASME Section XI Pump and Valve Program definition and would revise various surveillance test frequencies to be consistent with the ASME program. The current ASME testing program referenced in the Technical Specification results in excessive testing requirements, potentially causing unnecessary wear to pumps and valves. Referencing the new ASME Section XI program in the Technical Specifications will effectively improve the reliability of these components by the use of a more optimum testing frequency. Therefore, the probability of any previously evaluated accident will not increase and may in fact slightly decrease due to the decrease in unnecessary wear to pumps and valves during testing. The proposed change does not result in any modification to the plant or system operation and no safety-related equipment or function will be altered and, thus, the consequences of such accidents will not be affected.

2. Would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change in test frequencies for applicable pumps and valves are intended to meet 10 CFR 50.55a requirements. The proposed change does not alter the intent of the Technical Specifications or change the method of testing, nor change the acceptance criteria for the applicable equipment. No methods or limits of operations are being altered; therefore, no new accident possibilities are created.

3. Would not involve a significant reduction in a margin of safety. The proposed change will result in an optimum testing interval consistent with the ASME testing requirements. The earlier edition of the ASME Code specified greater testing frequencies. The Code was revised because the existing monthly frequency requirements caused unnecessary wear to pump and valve components. Therefore, the margin of safety has not been reduced, and could be slightly increased due to the decrease in unnecessary wear to pumps and valves during testing.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room

location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

NRC Assistant Director: Gary G. Zech

Wisconsin Public Service Corporation,
Docket No. 50-305, Kewaunee Nuclear
Power Plant, Kewaunee County,
Wisconsin

Date of amendment request:
November 30, 1987

Description of amendment request:
The proposed amendment would modify the Kewaunee Technical Specifications to permit sleeving of the steam generator tubes. Currently, the Kewaunee Technical Specifications have requirements only for removal from service by plugging those steam generator tubes with eddy current indications showing greater than 50 percent through-wall degradation. Plugging removes the tube from service by eliminating reactor coolant flow through the tube.

Sleeving is a process by which a smaller, shorter tube (sleeve) is placed inside the existing steam generator tube.

This sleeve extends a distance beyond the tube sheet region and is sealed to the original tube effectively forming a new barrier. Thus, if a defect were to exist in the steam generator tube in this area, the sleeving process is a viable alternative to plugging the tube and removing it from service.

Kewaunee has experienced some steam generator tube degradation and the use of sleeving will allow the life of the steam generators to be extended by allowing tubes with defects to be repaired and remain in service.

Basis for proposed no significant hazards consideration determination:
The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of a facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided a discussion regarding the above three criteria as summarized below:

Criterion 1: The creation of the option to sleeve defective steam generator tubes has no effect on either the probability or consequences of any accident previously evaluated. The integrity of the steam generator tubes will be consistent with the original design basis. Thus, since the structural integrity of the tubes will not be affected by sleeving, there is no increase in the probability of any accident previously evaluated.

In addition, the steam generator will remain capable of performing its required heat transfer function. The act of placing a sleeve in the steam generator tube actually results in more reactor coolant flow through the generator than if the tube were plugged. Thus, the consequences of any accident previously evaluated is unaffected because the heat transfer capability of the steam generators will not be significantly altered.

Criterion 2: As discussed above, both the structural integrity and the heat transfer capability of the Kewaunee steam generators will not be significantly affected by the use of sleeves. Repair of the tubes does not provide a mechanism resulting in an accident outside of the sleeved area. Any hypothetical accident as a result of potential tube or sleeve degradation in

the repaired portion of the tube would be bounded by the existing tube rupture accident analysis.

Criterion 3: The heat transfer capabilities of the Kewaunee steam generators will be improved by utilizing the sleeving process rather than the currently required plugging process. The sleeving process will allow a repaired steam generator tube to remain in service, rather than completely blocking the tube's flow with plugs. The safety factors used in the design of the sleeves for the repair of degraded tubes are consistent with the safety factors used in the steam generator design. Since the structural integrity of the steam generators will be unaltered, the net effect of utilizing a steam generator tube sleeving process rather than a plugging procedure will be an increase in margin of safety. This increase is due to the relatively improved heat transfer characteristics of the steam generator.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards consideration.

Local Public Document Room

location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq. Foley and Lardner, P. O. Box 2193 Orlando, Florida 31082.

NRC Project Director: Kenneth E. Perkins.

Wisconsin Electric Power Company,
Docket Nos. 50-266 and 50-301, Point
Beach Nuclear Plant, Unit Nos. 1 and 2,
Town of Two Creeks, Manitowoc
County, Wisconsin

Date of amendments request: January 8, 1987 as supplemented June 8 and October 16, 1987.

Description of amendments request:
These amendment requests were originally noticed April 22, 1987 (52 FR 13353). This notice identified the part of the amendments concerning the change in the number of containment hydrogen monitors as administrative. Further review indicates that this change is not administrative because the number of containment monitor channels is changed, and new Limiting Conditions for Operation (LCO's) are proposed.

Basis for proposed no significant hazards consideration determination:
The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed

amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Regarding (1) and (2) above, the proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated, or create the possibility of a new or different kind of accident from any accident previously evaluated. Hydrogen monitors are installed in the containment to detect post-accident hydrogen. Hydrogen monitors are not contributors to accidents, but are installed to ensure post-accident hydrogen detection capability. Regarding (3) above, the proposed amendments do not involve a significant reduction in a margin of safety because no design basis safety analyses or limiting settings are being changed by the proposed amendment. As stated above, the hydrogen monitors are installed in order to provide post-accident hydrogen detection capability. The monitors are not contributors to accidents, but are installed for use in response to accidents; therefore, the margin of safety is not affected by the proposed amendments.

On this basis, the staff proposes to determine that the proposed amendments do not involve significant hazards considerations.

Local Public Document Room
location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Kenneth E. Perkins

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this biweekly notice. They are repeated here because the biweekly notice lists all

amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Commonwealth Edison Company,
Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois.

Date of application for amendments:
December 3, 1987

Description of amendment request:
This amendment would modify the D.C. system technical specifications to address operation of the D.C. crosstie between units for the following two situations:

With both units operating and one battery charger fails, the D.C. crosstie may be used, for up to 24 hours, to maintain the D.C. bus in an operable status while the battery charger is being repaired.

With one unit operating and the other unit shutdown with a battery and its associated battery charger out of service, the D.C. crosstie may be used for up to 7 days, to maintain the D.C. bus in an operable status.

Basis for proposed no significant hazards consideration determination:
The staff has evaluated this proposed amendment and has determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

- (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
- (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
- (3) Involve a significant reduction in a margin of safety.

This proposed amendment controls the use of the D.C. crosstie between opposite unit D.C. buses. Accidents previously evaluated assume a certain load profile on a D.C. bus. The D.C. bus loading, when using the crosstie, will be restricted so the capacity of the operating unit's battery will not be exceeded in the event of a single failure and simultaneous accident and loss of offsite power condition. A single failure and simultaneous accident and loss of offsite power are the conditions assumed for a D.C. bus in previously evaluated accidents. As a result, the probability or consequences of accidents previously evaluated are not changed by this proposed amendment.

Therefore, based upon the previous analysis, the staff concludes that this change to the D.C. system Technical Specifications results in no reduction in the margin of safety and does not involve significant hazards consideration.

Local Public Document Room
location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to Licensee: Michael Miller, Esq., Isham, Lincoln and Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Project Director: Daniel R. Muller

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request:
November 18, 1987

Brief description of amendment request: The proposed amendment would modify Section 6 of the facility Technical Specifications to reflect (I) a new corporate and (II) a new plant staff organizational structure and (III) a revised composition of the Plant Operations Review Committee.

Date of publication of individual notice in Federal Register: December 23, 1987 (52 FR 48589)

Expiration date of individual notice:
January 22, 1988

Local Public Document Room
location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of amendment request:
November 19, 1987

Brief description of amendment request:

The proposed amendments would modify Section 6 of the facility Technical Specifications to reflect (I) a new corporate and (II) a new plant staff organizational structure, (III) a revised composition of the Plant Operations Review Committee and (IV) several administrative changes.

Date of publication of individual notice in Federal Register: December 23, 1987 (52 FR 48593)

Expiration date of individual notice:
January 22, 1988

Local Public Document Room
location: Government Publications

Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: June 30, 1987, as supplemented October 3, 1987

Brief description of amendment: The proposed amendment consists of changes to the Radiological Effluent Technical Specifications associated with the liquid, gaseous, and solid radwaste systems. The proposed changes are predominantly an upgrade of the existing specifications to current regulatory criteria.

Date of publication of individual notice in Federal Register: December 28, 1987 (52 FR 48889) and January 12, 1988 (53 FR 768)

Expiration date of individual notice: January 27, 1988

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the *Federal Register* as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment

under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dairyland Power Cooperative, Docket No. 50-409, La Crosse Boiling Water Reactor, La Crosse, Wisconsin

Date of application for amendment: April 17, 1986, March 24, 1987 and August 18, 1987

Brief description of amendment: This amendment revises the Technical Specifications (TS) to: (1) reduce the required size of the fire brigade from five persons to three persons and; (2) reflect the reorganization of the managements staff and update the offsite organization chart. Also, an exemption grants relief from 10 CFR Part 50, Appendix R, Section III.H with respect to requirements on the size of the fire brigade.

Date of issuance: January 4, 1988

Effective Date: January 4, 1988

Amendment No.: 58

Facility Operating License No. DPR-45. This Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 7, 1986 (51 FR 16927) and September 23, 1987 (52 FR 35790). The Commission's related evaluation of the amendment is contained in Safety Evaluation dated January 4, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: May 27, 1987

Brief description of amendment: This amendment revises Table 4.8.2.1-1 entitled, "Battery Surveillance Requirements," of Plant Technical Specification 3/4.8.2.1 (Appendix A to Facility Operating License No. NPF-43)

to delete Table Notations (7) and (8) and the applicable Bases which specify battery surveillance parameters for a nominal specific gravity electrolyte of 1.250.

Date of issuance: January 11, 1988

Effective date: January 11, 1988

Amendment No.: 13

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: July 1, 1987 (52 FR 24547) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 11, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: July 31, 1987

Brief description of amendments: The amendments change Technical Specification 3/4.7.4 "Nuclear Service Water System" and its Bases to reflect that portions of the system are shared between the two McGuire units, but that the system is not shared in its entirety.

Date of issuance: January 4, 1988

Effective date: January 4, 1988

Amendment Nos.: 78 and 59

Facility Operating License Nos. NPF-9 and NPF-17. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 9, 1987 (52 FR 34003) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 4, 1988

No significant hazards consideration comments received: No

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application of amendment: October 19, 1987

Brief description of amendment: This amendment deleted License Conditions 2.C(4) and 2.C(5). License Condition 2.C(4) required the licensee to use an approved method to show that Combustion Engineering fuel would not experience creep collapse unless the new Exxon Corporation methodology

had been approved for use by the staff and the results were valid for Cycle 6. License Condition 2.C(5) required the licensee to provide a supplement to XN-NF-85-117, "St. Lucie Unit 1 Revised LOCA ECCS Analysis with 15% Steam Generator Tube Plugging," that would provide the complete large-break LOCA spectrum results to demonstrate full compliance with the criteria of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 for the Commission staff's review and approval. Both license conditions had been satisfied.

Date of Issuance: January 13, 1988

Effective Date: January 13, 1988

Amendment No.: 88

Facility Operating License No. DPR-67: Amendment revised the License.

Date of initial notice in Federal Register: December 2, 1987 (52 FR 45886) The Commission's related evaluation of the amendment is contained in a letter dated January 13, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-396, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of application for amendment: March 20, 1987, as supplemented November 23, 1987

Description of application for amendment: The amendment modified the Technical Specifications to permit a temporary increase in the main steam line high radiation scram and isolation setpoints to facilitate the testing of hydrogen addition water chemistry.

Date of issuance: January 13, 1988

Effective date: January 13, 1988

Amendment No.: 88

Facility Operating License No. NPF-5: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 15, 1987 (52 FR 26586) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 1988

No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: October 5, 1987.

Brief description of amendments: The amendments revised the license conditions to change the name of the licensee from the Indiana and Michigan Electric Company to the Indiana Michigan Power Company.

Date of issuance: January 13, 1988

Effective date: January 13, 1988

Amendment Nos.: 114, and 98

Facility Operating License Nos. DPR-58 and DPR-74: Amendments revised the Licenses.

Date of initial notice in Federal Register: November 4, 1987 (52 FR 42363). The Commission's related evaluation of the amendments is contained in a letter dated January 13, 1988 and an environmental assessment dated December 3, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 28, 1987.

Brief description of amendment: The amendment revised the Technical Specifications by changing the limits for Axial Shape Index.

Date of issuance: January 5, 1988

Effective date: January 5, 1988

Amendment No.: 26

Facility Operating License No. NPF-38: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 7, 1987 (52 FR 37547) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 5, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: November 25, 1987

Brief description of amendment: The amendment changes the Technical Specifications to reflect changes to the divisional power supplies and associated primary containment penetration conductor overcurrent protective devices for two isolation valves in the reactor water cleanup system.

Date of issuance: January 4, 1988

Effective date: January 4, 1988

Amendment No.: 43

Facility Operating License No. NPF-29: This amendment revises the Technical Specifications.

Date of initial notice in Federal Register: December 4, 1987 (52 FR 46134) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 4, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station Unit No. 2, Town of Waterford, Connecticut

Date of application for amendment: December 22, 1986

Brief description of amendment: The amendment changes the expiration date for the Millstone Unit 2, Facility Operating License, DPR-65, from December 11, 2010 to July 31, 2015.

Date of issuance: January 12, 1988

Effective date: January 12, 1988

Amendment No.: 123

Facility Operating License No. DPR-65: Amendment changes the expiration date of the Facility Operating License.

Date of initial notice in Federal Register: February 26, 1987 (52 FR 5864) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 12, 1988 and Environmental Assessment dated January 12, 1988.

No Significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Waterford, Connecticut.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: December 5, 1986, as supplemented March 26, July 31 and November 6, 1987.

Brief description of amendment: The amendment revised criteria related to the auxiliary feedwater system and added specific requirements associated

with the emergency feedwater instrumentation and control system.

Date of issuance: January 5, 1988

Effective date: January 5, 1988

Amendment No.: 93

Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 23, 1987 (52 FR 35804). The November 6, 1987 submittal consists of administrative restructuring of the operability requirements table and a clarification of system testing constraints. The submittal does not change the substance of the amendment as previously noticed.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 5, 1988.

No significant hazards consideration comments received: No

Local Public Document Room

location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: June 2, 1987 (TS 234)

Brief description of amendments: The amendments correct a minor deficiency in technical specification 6.8.3.1, page 6.0-21, concerning high radiation areas. They change the upper limit of one set of requirements from "less than 1000 mrem/hr" to "less than or equal to 1000 mrem/hr" to clarify any time the radiation intensity of exactly 1000 mrem/hr is achieved in any area of the plant.

Date of issuance: December 31, 1987

Effective date: December 31, 1987, and shall be implemented within 30 days

Amendments Nos.: 139, 135, 110

Facility Operating Licenses Nos.

DPR-33, DPR-52 and DPR-68:

Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 21, 1987 (52 FR 39307) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 31, 1987.

No significant hazards consideration comments received: No

Local Public Document Room

location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: May 22, 1987 (TS 87-20)

Brief description of amendments: The amendment revises several functions for reactor trip system and engineered safety features actuation system instrumentation: the channel calibration requirements for the P-4 function is deleted, clarification for manual actuation is added, a response time correction is made, and automatic actuation logic requirements are added.

Date of issuance: December 31, 1987

Effective date: December 31, 1987

Amendment Nos.: 63, 55

Facility Operating Licenses Nos.

DPR-77 and DPR-79: Amendments

revised the Technical Specifications.

Date of initial notice in Federal Register: August 12, 1987 (52 FR 29931) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 31, 1987.

No significant hazards consideration comments received: No

Local Public Document Room

location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: August 11, 1987 (TS 87-32)

Brief description of amendments: The amendments revise the diesel generator continuous and two-hour ratings in the surveillance requirements.

Date of issuance: January 7, 1988

Effective date: January 8, 1988

Amendment Nos.: 64, 56

Facility Operating Licenses Nos.

DPR-77 and DPR-79: Amendments

revised the Technical Specifications.

Date of initial notice in Federal Register: October 21, 1987 (52 FR 39309) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 7, 1988.

No significant hazards consideration comments received: No

Local Public Document Room

location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: May 22, 1987 (TS 87-11)

Brief description of amendments: The amendments revise Section 3/4 11.2 to require sampling using the containment

noble gas activity monitors rather than the Shield Building stack monitor.

Date of issuance: January 11, 1988

Effective Date: January 11, 1988

Amendment Nos.: 65, 57

Facility Operating Licenses Nos. DPR-77 and DPR-79: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 15, 1987 (52 FR 26599) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 11, 1988.

No significant hazards consideration comments received: No

Local Public Document Room

location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: February 19, 1987 as supplemented by letter dated October 30, 1987.

Brief description of amendment: The amendment revised the License and Technical Specifications in order to remove certain fire protection requirements from the Technical Specifications and place them in plant procedures under the control of the plant's on-site review committee, and place them in the Final Safety Analysis Report.

Date of issuance: January 13, 1988.

Effective date: January 13, 1988 and shall be implemented upon the licensee's completion of the necessary procedural changes. The licensee will notify the Commission in writing when the necessary procedural changes have been completed.

Amendment No.: 30.

Facility Operating License No. NPF-30: Amendment revised the License and the Technical Specifications.

Date of initial notice in Federal Register: March 12, 1987 (52 FR 7697). The October 30, 1987 submittal contained only minor changes to, and clarification of, the original application. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room

location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin

Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of applications for amendments: October 7, 1986, as supplemented June 8, 1987; April 1, 1987; and May 26, 1987.

Brief description of amendments: These amendments revise Section 3.12 of the Surry Technical Specifications (TS) by revising the actions to be taken by the licensee while operating with an inoperable, misaligned or dropped control rod. Also, the fully withdrawn position of all rod cluster control assembly (RCCA) banks to minimize localized RCCA wears is redefined. Finally, these amendments permit the operation of Surry Units 1 and 2 with 15 x 15 Surry Improved Fuel Assemblies, in addition to the Westinghouse Low Parasitic 15 x 15 (LOPAR) Fuel Assemblies during Cycle 10. The LOPAR fuel assemblies will eventually be replaced by the SIF assemblies.

Date of issuance: January 6, 1988

Effective date: January 6, 1988

Amendment Nos. 116 and 116

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notices in Federal Register: August 12, 1987 (52 FR 29934), September 23, 1987 (52 FR 35809), and July 15, 1987 (52 FR 26602). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 6, 1988.

No significant hazards consideration comments received: No

Local Public Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Washington Public Power Supply System, Docket No. 50-397 Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: September 27, 1985, as supplemented November 6, 1985 and September 17, 1986.

Brief description of amendment: The amendment revises Section 6.4.1 of the Technical Specifications and the organization charts in Figures 6.2.2-1a and 6.2.2-1b to reflect organizational and other administrative changes.

Date of issuance: December 24, 1987

Effective date: December 24, 1987

Amendment No. 49

Facility Operating License No. NPF-21: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 22, 1986 (51 FR 27522)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 24, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: April 10, 1986 as revised July 17, 1987.

Brief description of amendments: The amendments modified Technical Specification 15.6.10, "Plant Operating Records", to make it consistent with the Westinghouse Standard Technical Specifications, and corrected minor administrative and typographical errors in numerous other TS.

Date of issuance: January 5, 1988

Effective date: January 5, 1988

Amendment Nos. 110, and 113

Facility Operating License Nos. DPR-24 and DPR-27: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 21, 1986 (51 FR 18696). The information provided by the July 17, 1987 letter revises certain changes requested in the April 10, 1986 amendment application to achieve consistency with 10 CFR Part 55. Additionally, the July 17, 1987 letter revises the amendment application to reflect the issuance of a number of amendments to the Technical Specifications since the April 10, 1986 amendment application was submitted. The July 17, 1987 submittal does not change the previous determination that the application for amendment involves no significant hazards consideration. The amendment application was renounced October 21, 1987 (52 FR 39310) to note a revision to the amendment application required by 10 CFR Part 55, which became effective May 26, 1987, after the original amendment application had been submitted. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 5, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may

provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By February 26, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of

Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment

involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: January 6, 1988 (NRC-88-0001)

Brief description of amendment: This amendment revises Table 3.4.3.2-2 of the Technical Specifications to correct alarm setpoints for the reactor coolant system interface valves leakage pressure monitors.

Date of Issuance: January 12, 1988

Effective date: January 12, 1988

Amendment No.: 14

Facility Operating License No. NPF-43: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

Comments received: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated January 12, 1988.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

Local Public Document Room

location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

NRC Project Director: Martin J. Virgilio

Dated at Bethesda, Maryland this 21st day of January 1988.

For the Nuclear Regulatory Commission

Dennis M. Crutchfield,

Director, Division of Reactor Projects - III, IV, V and Special Projects, Office of Nuclear Regulation.

[Doc. 88-1534 Filed 1-26-88; 8:45 am]

BILLING CODE 7590-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25276; File Nos. SR-Amex-87-11; SR-NYSE-87-8]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the American Stock Exchange, Inc. and the New York Stock Exchange, Inc. Relating to Fines and Disciplinary Proceedings

I. Introduction

The American and New York Stock Exchanges ("Amex" and "NYSE," collectively, "Exchanges") submitted copies of proposed rule changes pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² to amend their rules to eliminate the maximum limit on the amount of fines that may be imposed in connection with an exchange disciplinary action.³ Currently, NYSE Rule 476 permits a maximum fine per charge of \$25,000 for natural persons and \$100,000 for other than natural persons, while the Amex Constitution⁴

limits fines to \$25,000 for members, and \$100,000 for member organizations, and \$5,000 per offense for employees, with a \$25,000 aggregate employee limit.

In its filing, the NYSE offered two basic rationales for its proposal: (1) To keep pace with the rise in inflation and member capitalization and the dollar amount of business conducted by NYSE members since the Exchange last amended its fine maximum in 1978;⁵ and (2) to serve as a greater deterrent to violations and lax compliance procedures by NYSE members. The Amex cited basically similar justifications, also noting that the new rule would allow an Amex Disciplinary Panel to ensure that a rule violator would not retain illegal profits gained as a result of serious violations.

Notice of the proposals, together with their terms of substance, were provided by the issuance of Commission releases and by publication in the *Federal Register*.⁶ As described below, one commentator responded to both proposals.

II. Summary of Comments

The Securities Industry Association ("SIA") submitted two comment letters, one opposing the NYSE proposal and another one opposing the Amex proposal.⁷ The SIA suggested in its letters that removal of the fine limitation would deprive the exchanges' disciplinary procedures of "fairness, predictability and consistency," resulting in the imposition of unreasonably large fines.⁸ In support of this position, the SIA noted that federal and state statutes that contain the authority to fine also establish a maximum fine that can be levied.⁹ The

⁵ The NYSE's maximum fine levels were last raised in 1969. In 1978, the limits were amended, however, to permit fines on a per charge rather than a per disciplinary action basis, which essentially increased the maximum fine in multiple charge disciplinary actions.

⁶ Securities Exchange Act Release Nos. 24435 (May 7, 1987), 52 FR 18301 (NYSE notice); and 24709 (July 16, 1987, 52 FR 27603 (Amex notice).

⁷ See letters from Dennis H. Greenwald, Chairman, Federal Regulation Committee, SIA, to Jonathan G. Katz, Secretary, SEC, dated July 10, 1987, ("SIA-NYSE Letter") and August 3, 1987 ("SIA-Amex Letter"). Both letters make essentially the same arguments.

⁸ SIA-NYSE Letter at 2; SIA-Amex Letter at 2.

⁹ The SIA did not cite any statutes for this proposition. The Securities Exchange Act and Commodities Exchange Act, however, each included dollar limits on fines. See section 32 of the Act; section 6(c) of the Commodities Exchange Act. The rules of the Chicago Board Options Exchange (a national securities exchange registered with the Commission) do not, however, contain maximum levels on disciplinary fines. See CBOE Rule 17.11(a).

SIA also claimed that the right to appeal fines to an Exchange's Board of Directors would not adequately safeguard against unreasonable fines.

For the reasons noted above, the SIA in its letter concluded that some "appropriate limit" must be placed on the amount an NYSE or Amex member can be fined in a disciplinary proceeding, and proposed a level of \$100,000 for natural persons and \$250,000 for others.¹⁰ The SIA expressed confidence that these limits would assuage the stated concerns of the Amex and NYSE and would be more than adequate for the Exchanges' needs. In particular, the SIA noted that the increase would compensate for the rise in inflation and member capitalization, and the per charge provision would allow the Exchanges to assess substantial penalties commensurate with significant disciplinary actions.¹¹ Finally, the SIA contended that the larger limits, coupled with the existing range of disciplinary sanctions, such as suspensions, would serve a sufficient deterrent purpose, thereby making the complete elimination of limits unnecessary.

II. Discussion

The Commission has reviewed carefully the filings in light of the Act, particularly sections 6(b), 6(d)(1), and 19(e)(2) of the Act. Sections 6(b)(7) and 6(d)(1) establish those standards to which the rules of a national securities exchange must adhere in order to conform its activities "to fundamental standards of due process."¹²

¹⁰ As noted above, the Amex fine schedule places a \$5,000 limit on fines assessed employees. The SIA suggested that the employee limit be raised to \$20,000.

¹¹ This point is not pertinent to the Amex rule, which presently does not have a per charge provision.

¹² See S. Rep. No. 75, 94th Cong. 1st Sess. 25 (1975). The Senate Report explained the intent behind the enactment of sections 6(b)(7) and 6(d)(1), as well as the review provisions contained in sections 19(d) and 19(e) of the Act, as follows:

The Exchange Act presently requires that the NASD's [National Association of Securities Dealers] disciplinary actions be conducted in accordance with rules which provide "a fair and orderly procedure," including the obligation that the self-regulatory organization bring "specific charges," give notice, provide an opportunity for hearing, and identify in any adverse determination the act or practice which constitutes the violation of a "specific rule or rules." The Exchange Act also provides for Commission review of NASD disciplinary actions both on the Commission's own motion and by petition of an aggrieved person. In contrast to the provisions under which the NASD must operate, the Exchange Act contains no requirements as to an exchange's disciplinary procedures and no provision for Commission review of an exchange's enforcement actions. Sections 6(b)(7), 15A(b)(8) [parallel section to section 6(b)(7),

Continued

¹ 15 U.S.C. 78s(b).

² 17 CFR 240.19b-4 (1986).

³ The Amex filing also contained a proposal relating to the fine structure of its minor rule violation plan, which was approved separately. See Securities Exchange Act Release No. 25106 (November 9, 1987), 52 FR 43958. The NYSE filing contains a proposal relating to a procedural aspect of its disciplinary proceedings. That proposal will amend NYSE Rule 476 to require that, to the extent reasonably possible, at least one member of an NYSE Disciplinary Panel be engaged in activities similar to those of the respondent.

⁴ Article V, section 4(n).

Pursuant to section 6(d)(1), an exchange, when disciplining a member, must at a minimum bring specific charges, notify the member, provide an opportunity to defend, maintain a record, and, if a sanction is imposed, provide a statement setting forth the specific act or practice, the rule or regulation violated and the sanction imposed and the reasons therefor.¹³ Section 6(b)(7) provides that an exchange must ensure that its rules are "in accordance with the provisions of subsection (d) of this section, and, in general, provide a fair procedure for the disciplining of members and persons associated with members[.]"¹⁴ The legislative history of section 6(b)(7) notes that section 6(d)(1) is intended to "provide the minimum due process appropriate in each particular case."¹⁵ Neither the language of section 6(d) nor its legislative history provide any indication that the lack of a fine limit would violate the minimum standard of due process required under the Act.

The legislative history of section 6(b)(7) likewise provides no indication as to whether a lack of a fine limit would violate the "fair procedure for disciplining of members" provision of that section. As noted previously, the provisions of section 6(b)(7) are intended to apply to exchange members the identical procedural safeguards afforded members of a registered securities association.¹⁶ Further, a review of the legislative history of the 1938 Amendments to the Act (which added provisions governing national securities associations), and specifically sections 15A(b)(8) and 15A(h)(1), which parallel sections 6(b)(7) and 6(d)(1), indicate that Congress did not specifically intend the "fair procedure" language to include anything more than the specific criteria delineated in sections 6(d)(1) and 15A(h)(1). Moreover, the legislative history noted that "[i]t is contemplated that the exact procedure [for disciplining members] will be defined by the rules of the association, within the framework set forth in this paragraph [section 15A(b)(8)/section 6(b)(7)]."¹⁷

applying to securities associations, which was unchanged by the 1975 Amendments], 19(d) and 19(e) would eliminate these statutory anomalies and establish uniform standards to which both exchange and NASD rules would be required to conform and in accordance with which SEC review would be available.

¹³ 15 U.S.C. 78f(d)(1).

¹⁴ 15 U.S.C. 78f(b)(7).

¹⁵ See S. Rep. No. 75 at 96.

¹⁶ See note 12 *supra*; Sen. Rep. No. 75 at 96.

¹⁷ See S. Rep. No. 1455, 75th Cong., 3d Session. 7 (1938).

Accordingly, neither the Act nor its legislative history support the proposition that the NYSE and Amex proposals would violate the Act's standards for fair disciplinary procedures if there was no limit on the potential size of fines.

Nevertheless, the Commission also considered the SIA's allegation that the NYSE's and Amex's proposals do not provide "adequate safeguards against the imposition of unreasonable and egregious fines."¹⁸ In addition to the various due process protections in its disciplinary process, the NYSE has specific procedural rules pertaining to penalties. During the course of a hearing, either party may request the Hearing Panel to permit the presentation and introduction of evidence, including character or other witnesses, solely on the issue of penalty. In addition, in a disciplinary proceeding involving a written consent as to sanction, the Hearing Panel has the option of accepting or rejecting the consent, or imposing a penalty less severe than the penalty to which the respondent consented.¹⁹ In either situation, the Exchange is required to keep a record of the proceeding, and issue a statement setting forth, among other things, the sanction imposed and the reasons therefor.²⁰ Article IX, section 6 of the NYSE Constitution further provides that any person found guilty pursuant to a disciplinary proceeding can request the Board of Directors to review both the decision and the sanction imposed. The Board can sustain, modify, reverse, increase, decrease, or eliminate the penalty imposed by the Hearing Panel.

The disciplinary procedures of the Amex, including its review procedures, are substantially similar to the procedures of the NYSE.²¹ The Amex review procedures permit the Board of Governors to reverse, modify, decrease or eliminate the penalties imposed by the Disciplinary Panel. Moreover, unlike the NYSE procedures, the Amex Board may decrease, but cannot increase a sanction on its own, but can only remand the proceeding to the Disciplinary Panel to consider an increase in sanction.²²

In addition to the safeguards provided by exchange procedures, disciplined persons have the right to petition the Commission for review of a sanction

imposed by a self-regulatory organization ("SRO") pursuant to section 19(d)(2) of the Act.²³ Section 19(e)(2) of the Act further grants the Commission the authority to cancel, reduce, or require the remission of an SRO-imposed sanction, if it determines that the sanction is excessive or oppressive, or if the sanction imposes a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.²⁴

The Commission also finds that the NYSE and Amex proposals to eliminate fine limits will enable the Exchanges to perform more effectively their regulatory responsibilities under sections 6(b)(5), 6(b)(6) and 6(b)(8) of the Act. The flexibility allowed by the proposal will help the Exchanges to ensure that members are appropriately disciplined pursuant to section 6(b)(6). The Commission's own settlement of various enforcement matters pursuant to the Insider Traders Sanctions Act demonstrate that fixed fine limits may be inadequate in certain circumstances. Moreover, a suspension or expulsion may not be an appropriate (or in some cases sufficient) sanction in certain cases, yet the Exchanges may be constrained by fine limits in fashioning a sanction commensurate with the gravity of the violation.²⁵ Finally, the Commission believes that the procedural and appeal protections contained in the Amex and NYSE rules combined with the section 19(e) review procedures are sufficient checks on excessive SRO sanctions and an effective means of ensuring the rights of SRO respondents as envisioned by the Act.

IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder. Specifically, the Commission has concluded that the removal of maximum limits on fines is

²³ See 15 U.S.C. 78s(d)(2). Section 19(d)(2) also grants the Commission the authority to review disciplinary decisions of the SROs on its own motion.

²⁴ 15 U.S.C. 78s(e)(2).

²⁵ While the Commission agrees with the Exchanges that increasingly larger fines may be appropriate in today's marketplace, such a determination does not lead to the conclusion that future specific fines or established fine levels for certain violations cannot be found, in specific cases, to be unreasonable or burdensome or inappropriate in light of the Act.

¹⁸ NYSE letter at 4; Annex letter at 4.

¹⁹ See NYSE Art. IX, section 5.

²⁰ See NYSE Rule 476(e). The requirements of Rule 476(e) mirror the requirements imposed on exchanges by section 6(d)(1) of the Act.

²¹ See generally Article V of the Amex Constitution.

²² See Amex Article V, section (1)(b)(5).

not *per se* violative of the due process protections mandated by sections 6(b)(7) and 6(d)(1) of the Act and that the proposal is consistent with sections 6(b)(5), 6(b)(6), and 6(b)(8) of the Act. The Commission believes that the removal of fine limitations will provide the exchanges the flexibility necessary to discipline effectively their members. Further, the Commission is convinced that the review provisions of section 19 provide sufficient oversight of SRO compliance procedures and will prevent the NYSE or Amex from using their increased fine authority in a manner contrary to the purposes of the Act.²⁶

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above mentioned proposed rule changes be, and hereby are, approved.

By the Commission.

Jonathan G. Katz,
Secretary.

Dated: January 20, 1988.

[FR Doc. 88-1674 Filed 1-26-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25269; File No. SR-MSRB-87-15]

Self-Regulatory Organizations; Order Approving on an Accelerated Basis Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Nomination and Election of Board Members

Pursuant to section 19(b) (1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b) (1), notice is hereby given that on December 23, 1987, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board (the "Board") is filing herewith an amendment to Board rule A-3 on the nomination and election of Board members. The proposed rule change would delegate more authority to the Board's Nominating Committee and would delete the ability of 20 percent of

municipal securities dealers to nominate an additional candidate for each industry position to be filled.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Board rule A-3(c) contains procedures for the nomination and election of Board members. The Board has adopted revisions to these procedures which delegate more authority to the Nominating Committee. The Board believes that these revisions will retain the Board's primary goals in its selection of new Board members: providing equal representation on the Board by bank dealers, securities firms, and public members within the framework of staggered terms of office; assuring broad diversity in the background of Board members; establishing a workable democratic procedure for the nomination and election of Board members; and tailoring a suitably deliberative framework for the election process.

Membership of the Nominating Committee

Under rule A-3(c) (ii), the Nominating Committee currently consists of five senior class members of the Board and six persons who are not members of the Board consisting of two representatives each of securities firms, bank dealers and the public. The proposed rule change provides that the Nominating Committee will consist of six Board members and three persons who are not members of the Board. Of the six Board members, two each will represent securities firms, bank dealers and the public. The Board has concluded that it is appropriate to provide some continuity from year-to-year of Board member representatives on the Nominating Committee. Therefore, the six Board members may be chosen from any of the three member classes. Of the three non-Board members, one each will represent securities firms, bank dealers and the public, respectively.

Nominations Procedure

Under current rule A-3(c) (iv), the Nominating Committee nominates three persons for each of the Board positions to be filled. The Board elects one of the three nominees. The proposed rule change provides that the Nominating Committee will submit only one nominee for each available Board

position. Under this approach, the Board will communicate with the Nominating Committee the qualifications of individuals the Committee should consider and later may review the list of all possible nominees. When the Committee determines its slate of nominees, it will contact these individuals and ask them if they wish to serve on the Board, subject to the Board's approval. If they agree, their names will be presented to the Board. The Board will accept or reject the slate of nominees. It is anticipated that the Board will vote to accept the nominees. In the event a nominee is rejected, however, the Nominating Committee must hold a meeting to choose another nominee. The Board believes that this non-competitive election process will ensure that highly qualified individuals are nominated to become members of the Board.

Industry Nomination Process

Under current rule A-3(c) (vi), (vii) and (viii), 20 percent of municipal securities dealers may nominate an additional candidate for each of the industry positions to be filled. When the Board adopted this procedure it indicated that it was intended as a "safety valve" in the event there was substantial industry disagreement with the candidates nominated by the Board. In the ten years the rule has been in effect, there have been no industry candidates nominated in this fashion. Moreover, as a practical matter, it appears that this procedure would be difficult to implement. The Board believes that its nomination and election process has resulted in industry candidates that are able and representative of municipal securities dealers and, as a result, this alternative nomination procedure should be deleted from the rule.

Miscellaneous

The proposed rule change deletes from rule A-3 references to specific dates in the rule. The Board anticipates that its revised nominations process will require frequent meetings of its Nominating Committee and it does not appear practical to confine Committee action by imposing the time frames currently provided for in the rule.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(1) of the Securities Exchange Act of 1934, as amended (the "Act"). Section 15B(b)(2)(I) authorizes and directs the Board to adopt rules providing for the operation and administration of the Board.

²⁶ The Commission simultaneously approves, as consistent with section 6(b)(7) of the Act, the NYSE proposal to require that, when reasonably possible, at least one member of an NYSE Disciplinary Panel be engaged in activities similar to the respondent.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not affect the conduct of business by any broker, dealer, or municipal securities dealer. The Board therefore believes that the proposed rule change would not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or others

The Board neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Board requests the Commission to find good cause for approving the proposed rule change prior to the 35th day after its publication in the **Federal Register** under section 19(b)(2) of the Act if the approval date would not occur prior to February 12, 1988. The Board wishes to approve the members of the Nominating Committee at its February 17-19, 1988 meeting. The Nominating Committee, under the proposed rule change, will be constituted differently than under the current rule. In addition, the Committee will be required to meet more frequently in order to ensure that the nominations procedure is completed in time for a Board vote on the nominee slate to take place prior to the expiration of the term of the current senior class on September 30, 1988. If the proposed rule change is not effective by February 12, 1988, it will be difficult for the Board to discuss a list of possible committee members at the February 17-19 meeting and to begin the nominations process. Therefore, the Board believes that good cause exists to accelerate the effectiveness of the proposed rule change under section 19(b)(2) of the Act if such acceleration is necessary to obtain effectiveness of the proposed rule change on or prior to February 12, 1988.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments,

all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 17, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 15, 1988.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-1610 Filed 1-26-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16235; File No. 812-6208]

College Retirement Equities Fund and Teachers Insurance and Annuity Association of America; Order for Hearing on Application and Order of Temporary Relief With Conditions

I.

On July 10, 1987, the Commission issued a notice ("July Notice") (Investment Company Act Release No. 15886) of an application filed by College Retirement Equities Fund ("CREF") and Teachers Insurance and Annuity Association of America ("TIAA") for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting CREF and TIAA ("Applicants") from the provisions of sections 2(a)(32), 2(a)(37), 2(a)(42), 12(b), 12(d), 13(a), 15(a), 15(b), 16(a), 17(f), 18(f), 18(i), 22(c), 22(e), 26(a), 27(c)(1), 27(c)(2), 27(d), and 32(a) of the Act and Rules 0-1(e), 2a-4, 12b-1, 17f-2, 18f-2, 22c-1, and 27e-1 thereunder, and pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder permitting certain transactions. The application would permit CREF to, among other things, restrict redemptions, limit the voting rights of its participants, bear distribution costs, and value its annuity units annually. The July Notice, which is incorporated here by reference, gave any interested person until August 4, 1987, to file a request in writing for a

hearing on the application accompanied by a statement of the nature of his interest, the reason for the request, and the issues of fact or law proposed to be controverted.

The Commission has received 20 hearing requests and 22 other letters opposing the granting of the application (particularly the redeemability and voting relief), urging a hearing, requesting notification if a hearing is ordered and/or requesting that the Commission grant CREF temporary relief to allow CREF to implement its money market account. The hearing requests and letters, which are available in the Commission's Public File No. 3-6954, may be grouped as follows: (1) CREF participants,¹ (2) competitors of CREF,² (3) colleges³ (Stanford University in its hearing request asks to be made a party to any proceeding and also asks that the period during which a hearing may be requested be extended) and, (4) others.⁴

It appears to the Commission that it is appropriate in the public interest and in the interest of investors that a hearing be held with respect to the application. Accordingly,

It is ordered, pursuant to section 40(a) of the Act, that a hearing on the application under the applicable provisions of the Act and Rules of the Commission thereunder be held on March 16, 1988, at 10:00 a.m., in Room 1C30, 450 Fifth Street NW., Washington,

¹ CREF participants requesting a hearing include: Professors Schotland and Birnbaum of Georgetown University Law Center; Professors Shreve, Stake and Bradley of the Indiana University School of Law; Mr. Money, Vice Chancellor of Texas A&M; Thomas Swett of the Upland Country Day School; Professor Gordon of Denison University; Frederick DeKuyper, Esq.; Hans H. Jenny, Executive V.P., Chapman College; the American Association of University Professors and United University Professions (Professor Hollis of the California State Polytechnic University, Professor Thompson of the University of Pittsburgh School of Medicine, Richard L. Silva, employed by Yale University, and Mr. Neil Wright each submitted a letter).

² The competitors of CREF requesting a hearing include: the Investment Company Institute; Scudder Fund Distributors, Inc.; Fidelity Investments Institutional Services Company; T. Rowe Price Associates, Inc.; and Putnam Financial Services Inc. (the Vanguard Group of Investment Companies submitted a letter).

³ The colleges requesting a hearing include Stanford University, Louisville University, and Whitman College. Comment letters were submitted by the University of Vermont, Harvard University, the University of Tennessee, Purdue University, the University of Nebraska, the State University of New York, the University of Maryland, the University of Alabama, the University of Notre Dame, Tuskegee University, the University of Michigan, and Brown University.

⁴ The Commission on College Retirement, the American Association of State Colleges and Universities, the American Council on Education, and a TIAA trustee each submitted a letter.

DC 20549, and that an Administrative Law Judge to be designated by further order preside at said hearing. Any person, other than the Applicants, desiring to be heard or otherwise wishing to participate in this proceeding is directed to file with the Secretary of the Commission, on or before March 14, 1988, an application as provided by Rule 9 of the Commission's Rules of Practice (17 CFR 201.9), setting forth the nature and extent of his interest in the proceeding and any issues of fact or law which he desires to controvert, or any additional issues that he deems raised by this Notice and Order or by said application. A copy of that request shall be served personally upon the Applicants⁵, and proof of such service (by affidavit or in the cases of an attorney-at-law, certificate) shall be filed contemporaneously with the request. Persons filing an application to participate or to be heard will receive notice of the date and place of the hearing, and any adjournments thereof, as well as other actions of the Commission involving the subject matter of this proceeding.

II.

The Commission finds that the following matters and questions are presented for consideration at the hearing without prejudice to its specifying additional matters and questions upon further examination:

(1) Whether the restrictions on redeemability of CREF's Retirement Unit-Annuity Certificates are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act;

(2) Whether CREF's procedure for electing trustees is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act;

(3) Whether any exemption from the provisions of Rule 12b-1 under the Act for CREF's financing of distribution is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act;

(4) Whether it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act to grant the Applicants the other

exemptions they seek from the various provisions of the Act and the relevant rules and regulations thereunder.

It is further ordered that at the hearing attention should be given to the foregoing matters.

It is further ordered that the Division of Investment Management, pursuant to 17 CFR Part 201(a), shall be a party to the proceeding.

III.

Stanford University, in its hearing request, asks to be made a party to any hearing. The Commission's Rules of Practice provide that, subject to certain exceptions not here relevant, no person shall be admitted as a party to a proceeding by intervention unless the Commission is satisfied that, on the basis of a written application, that person's participation as a party would be in the public interest, and that leave to be heard as a participant would be inadequate to protect that person's interest (17 CFR 201.9(e)). Stanford University has advanced no compelling arguments that either (1) leave to be heard would be inadequate for the protection of its interests or (2) its participation as a party would be in the public interest.

It is further ordered that Stanford University's request to be made a party to the proceeding is denied, without prejudice to Stanford University's filing an application to participate as a limited participant in the proceeding pursuant to Rule 9(c) of the Commission's Rules of Practice, as provided above.

Stanford University has also requested that the period during which a hearing may be requested be extended. The Commission having ordered a hearing, the request is moot. As provided by Rules of Practice, 17 CFR 201.9, a person's failure to submit a request for hearing during the notice period would not prevent the person from seeking to take part in the hearing.

It is further ordered that the period during which a hearing may be requested is not extended.

IV.

The first of the participants to request a hearing raised the possibility of granting CREF temporary relief to cause it to implement a money market account whose interests would be exchangeable for interests in the existing CREF stock account and *vice versa*.⁶ Many

⁵ Professor Schotland, hearing request, dated July 30, 1987. Subsequently, Professor Schotland changed his position and opposed temporary relief unless that relief were restricted and conditioned. (Letter from Professor Schotland, dated November 9, 1987).

subsequent hearing requests and letters by participants and colleges strongly supported temporary relief.⁷ CREF made its own request for temporary relief in a statement dated August 21, 1987, and later stated that it would not proceed with the money market account without a temporary exemptive order.⁸

On October 20, 1987, the Commission issued a notice ("October Notice") that Applicants had requested temporary relief.⁹ The October Notice gave interested persons an opportunity to comment on the request for temporary relief or request a hearing on whether temporary relief should be ordered. The Commission received 22 responses opposing temporary relief and/or requesting a hearing. Nine of these submissions were submitted by CREF participants,¹⁰ five were submitted by competitors,¹¹ and eight were submitted by colleges and universities.¹²

The hearing requests and letters opposing temporary relief raised many arguments against granting Applicants the requested relief on a temporary basis. Most of these arguments, however, are ones that more appropriately address whether permanent exemptive relief should be granted. The primary arguments raised by the hearing requests that relate solely to the question of temporary relief involve allegations that temporary relief will prejudice the final outcome of the exemptive application and that, by conditioning the introduction of its money market account upon receipt of a

⁷ American Association of State Colleges and Universities; American Council on Education; American Association of University Professors; University of Nebraska; Tuskegee University; The University of Maryland; The University of Alabama System; University of Notre Dame; The University of Tennessee; Purdue University; State University of New York; Harvard University; The University of Michigan; Brown University; Professor Craig M. Bradley, Indiana University School of Law; Professor Jeffrey Evans Stake, Indiana University School of Law; Professor Gene R. Schreve, Indiana University School of Law; Mr. Neil Wright; Mr. Richard L. Silva employed by Yale University; and Mr. David Alexander, President, Pomona College, Trustee of TIAA.

⁸ Letter from CREF's counsel to the Office of Insurance Products and Legal Compliance, Division of Investment Management, dated October 6, 1987.

⁹ Investment Company Rel. No. 16062.

¹⁰ Michael Gordon, Denison University; Marvin Murray, University of Louisville; Frederick DeKuyper; Roy Schotland, Georgetown University Law Center (two letters); Ronald Knight, University of Maine (two letters); Mark Thompson, University of Pittsburgh; and Vicki Shidel, University of Pittsburgh.

¹¹ Fidelity Investments; Investment Company Institute; The Vanguard Group (two letters); and T. Rowe Price.

¹² Stanford University (two submissions); Duke University; Johns Hopkins University; Georgetown University; University of Louisville; University of Vermont; and University of Southern California.

⁵ Applicants' address for service is 730 Third Avenue New York, NY 10017.

temporary exemptive order, CREF is not acting in the best interests of its participants.

The Commission also received 22 letters from colleges, universities, other institutions and one professional association¹³ that expressed support for temporary relief. These respondents support temporary relief because it would allow CREF to institute the money market account which they repeatedly cite as a much-needed investment option for CREF participants. CREF also submitted two statements in support of its request for temporary relief.

In its "Supplemental Statement" dated December 2, 1987 CREF announced its intention to offer transferable money market and equity options for new premium contributions in the form of a new product, the CREF Group Annuity.¹⁴ The introduction of the Group Annuity, which CREF represents to be "imminent,"¹⁵ would allow participants to transfer their CREF accumulation under that Annuity to other pension funding vehicles approved by the participating institution for its retirement plan, or to receive their accumulations when they terminate employment.

The Commission has considered the requests for a hearing submitted in responses to the October Notice and concludes, in accordance with the requirements of Rule 0-5(c) (17 CFR 270.0-5(c)), that a full evidentiary hearing on temporary relief is neither necessary nor appropriate in the public interest or for the protection of investors. In making this determination, the Commission has considered a number of factors. Interested persons, including CREF, have submitted extensive written comments concerning the issues raised by the October Notice. The Commission has carefully reviewed these comments and has taken them into account in fashioning this grant of temporary relief.

An important factor considered by the Commission is the real benefits to

current CREF participants resulting from the new investment alternatives contemplated by this order, including the availability of a money market account as a new investment option for CREF participants. Participants and others argue that this option is appropriate to permit investors to protect their funds from market fluctuations. Conducting a hearing on temporary relief would delay the offering of a CREF money market account and deprive CREF participants of these benefits for the duration of such a hearing.

The Commission believes that this grant of temporary relief will not prejudice its consideration of CREF's request for permanent relief. The Commission notes that it has ordered a hearing on the request for permanent relief and that its disposition of that request will be based upon the record developed in that proceeding. There should be no assumption that the determination reached in that proceeding will be affected by this determination concerning temporary relief. Moreover, if the Commission ultimately determines to deny permanent relief or to grant it under substantially different terms than CREF has sought, the Commission expects that CREF can and will comply with the Commission's final determination. Because it is possible that CREF or its participants may be adversely affected by a Commission determination not to grant permanent relief, CREF is required, under the terms of this order, to disclose in its registration statement its alternative courses of action if it is denied a permanent order.

It is further ordered, that the requests for a full evidentiary hearing on the question of temporary relief for Applicants are denied.

Under section 6(c) of the Act the Commission may "conditionally or unconditionally" grant exemptions from the Act if they are "necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act]." The matter of temporary relief has been considered by the Commission, and it finds that under the foregoing circumstances temporary relief in the form of exemptions upon stated conditions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

The Commission has determined, first, that temporary relief will be conditioned on CREF's offering a money market

account with interests exchangeable for interests in the CREF equity account in the manner described in the application. The Commission has determined, second, that temporary relief also will be conditioned upon CREF's introduction of an investment option that permits transfers of new premium contributions¹⁶ to competing funds, to the extent permitted by employers. A transferable investment option could be the Group Annuity that CREF plans to introduce, or some other alternative—permitting transferability of existing CREF certificates, for example. Under this condition, the requested temporary exemptions will not become effective until the transferable investment option for new premium payments is offered to the institutions served by CREF.¹⁷ This condition on temporary relief is appropriate to protect the interests of interested persons during the pendency of the hearing on the application. The condition is further warranted because CREF is apparently able to introduce a transferable investment option for new premium payments,¹⁸ and because conditioning temporary relief on CREF's introduction of a transferable investment option would respond, at least in part, to objections to restrictions on transferability.

The availability of temporary relief will, therefore, depend on CREF giving participants (1) the opportunity to exchange their previously accumulated interests in the CREF equity account for interests in a CREF money market account and *vice versa*, and (2) an investment option to transfer accumulated new premiums, with the approval of their respective employers, to the investment products of other providers.

It is further ordered, pursuant to section 6(c) of the Act, that the application to permit exemptions from the provisions of sections 2(a)(32), 2(a)(37), 2(a)(42), 12(b), 12(d), 13(a), 15(a), 15(b), 16(a), 17(f), 18(f), 18(i), 22(c), 22(e), 26(a), 27(c)(1), 27(c)(2), 27(d), and 32(a) of the Act and Rules 0-1(e), 2a-4, 12b-1, 17f-2, 18f-2, 22c-1, and 27e-1 thereunder, and pursuant to section 17(d) of the Act and Rule 17d-1 thereunder permitting certain

¹⁶ "New premium contributions" refers to participant and employer contributions, and earnings on those contributions, made after the Commission's order providing temporary relief becomes effective.

¹⁷ The Commission acknowledges that, typically, it is the employer's decision whether to offer a particular investment option under its retirement benefits plan.

¹⁸ Supplemental Statement on Behalf of CREF and TIAA, dated December 2, 1987 (discussing CREF's plan to implement a new group annuity).

¹³ University of Missouri; Rockefeller University; Boston College; George Washington University; University System of New Hampshire; University of Miami; Brookings Institution; University of South Alabama; Wake Forest; Bush Foundation; Furman University; SRI International; University of Iowa; Cornell University; Utah State University; Iowa State University; Brandeis University; University of Nebraska; University of Maine; Texas Christian University; University of Chicago; Johns Hopkins Applied Physics Lab; and American Association of University Professors.

¹⁴ On November 18, 1987, CREF's Board of Trustees unanimously accepted a recommendation by a special study committee to introduce the Group Annuity. See Supplemental Statement on Behalf of CREF and TIAA, dated December 2, 1987, at 3.

¹⁵ *Id.* at 13.

transactions be, and hereby is, granted pending a final Commission determination on the application. This order is given only to the extent necessary to permit CREF's existing methods of operation to be applied to its money market account and stock account during the pendency of the hearing. This order shall in no way affect the final determination of this matter. This order is expressly conditioned on: (1) CREF offering an investment option which permits transfers of new premium contributions to non-TIAA-CREF investment vehicles to the extent permitted by an employer; the transferable investment option must be offered to those institutions served by CREF with the understanding that the institution will make the determination whether to offer the new option to its employees in accordance with its retirement plan; and (2) CREF restructuring itself as described in its Registration Statement on Form N-3 (Registration No. 33-480; 811-4415) to allow transfers between its money market account and stock account before the start of annuity payments. CREF is also required to include in its registration statement, amount other things, complete disclosure on CREF's alternative courses of action if it is denied a permanent order.

V.

A number of hearing requests in response to the October Notice also claim that the scope of the requested relief is unnecessarily broad and propose alternative forms of temporary relief for CREF.¹⁹ Restricting relief as suggested, or conditioning it as requested, however, might result in delaying CREF's offering to its participants interests in a money market account. In particular, the Commission has considered suggestions that exemptive relief be limited to the money market account alone. Currently, CREF's stock account and the proposed money market account constitute a single entity for purposes of the Act and for purposes of the Securities Act of 1933, and both accounts are covered by a single registration statement. Consequently, granting relief only to the money market account would raise significant practical problems.

In addition to these substantive proposals, a number of opponents make requests regarding the procedural

conduct of these proceedings.²⁰ These matters are appropriately within the competence of the administrative law judge before whom the proceedings will be held.

Therefore, with respect to the numerous requests for alternative forms of temporary relief and instructions regarding the conduct of the proceedings, the Commission notes that it has considered each of these requests and finds that they are neither necessary nor appropriate in the public interest or for the protection of investors.

It is further ordered, that the various requests for alternative forms of temporary relief are denied.

It is further ordered, that the various requests for special instructions regarding the conduct of the hearing on permanent relief are denied.

VI.

Stanford University submitted a separate memorandum dated December 17, 1987 objecting to CREF's filing the Supplemental Statement after the November 9, 1987, deadline without serving copies on interested persons. CREF's Supplemental Statement was placed in the public files when received, as have been all other filings. Stanford requests that the Commission publish a notice of CREF's Supplemental Statement so that interested persons may have an opportunity for comment. In the alternative, Stanford requests that the Commission refrain reaching a final decision on the question of temporary relief until January 8, 1988, so that interested persons will have an adequate period of time to prepare and submit comments on this subject.

CREF's Supplementary Statement does not request any different relief from the relief it has previously requested. For that reason, renotification of the matter is neither necessary nor appropriate. Moreover, neither the Commission's Rules of Practice nor the Administrative Procedure Act provide a basis for Stanford's request. Furthermore, while the Commission may, in its discretion, consider a communication received after the end of a comment period, including an applicant's response to the comments received, or a commenter's answer to such a response, the Commission does not believe that it should defer considering a matter until no one wishes to make any further comment. In any event, Stanford submitted a second

memorandum, dated January 6, 1988, commenting fully on CREF's Supplemental Statement. Stanford's submission, as well as five other letters specifically commenting on CREF's Supplemental Statement,²¹ were fully considered by the Commission.

It is further ordered, that Stanford's request that the matter be renoticed is denied.

VII.

It is further ordered that the Secretary of the Commission shall give notice of the aforesaid hearing on the application by mailing a copy of this Notice and Order by certified mail to the Applicants at the address noted above and to the petitioners and various other persons who have written to the Commission expressing their views on this matter; that notice to all other persons be given by publication of this Notice and Order in the *Federal Register*; that a copy of this Notice and Order shall be published in the "SEC Docket;" and that an announcement of the aforesaid hearing shall be included in the "SEC News Digest." By the Commission.

Jonathan G. Katz,

Secretary.

January 21, 1988.

[FR Doc. 88-1612 Filed 1-26-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16237; 812-7990]

Institutional Investors Tax-Advantaged Income Fund, Inc.; Application

January 21, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Company Act of 1940 ("1940 Act").

Applicant: Institutional Investors Tax-Advantaged Income Fund, Inc. ("Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(c) and 17(b) from sections 10(a), 15(c), 17(a)(1), 20(a), 22(d), 22(e) and 24(d) of the 1940 Act and Rules 17f-2 and 20a-1 thereunder.

Summary of Application: Applicant, a New York Corporation registered under the 1940 Act as an open-end investment company, seeks an order of the Commission to permit it to operate in the manner proposed, as a mutual

¹⁹The hearing requests of Professor Schotland, (letter dated November 9, 1987), the Investment Company Institute (letter dated November 9, 1987), and Stanford University (Memorandum dated November 9, 1987) offer a number of alternatives for temporary relief.

²⁰E.g., Professor Schotland's letter dated November 9, 1987, includes a request that the Commission require "regulatory negotiation" for these proceedings.

²¹These letters were submitted by Professor Schotland, Georgetown University; the University of Vermont; Ronald Knight, the University of Maine; The Vanguard Group; and the University of Southern California.

investment vehicle for New York State savings banks.

Filing Date: The application was filed on October 28, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 16, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC 450 5th Street, N.W., Washington, DC 20549. Applicant, 330 Madison Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney (202) 272-3046, or Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations: 1. Applicant has been created by certain New York savings banks as part of their effort to improve profitability in today's economic climate. The investment objectives and policies of Applicant are: (1) To obtain a high level of current income constituting dividends for Federal income tax purposes which are eligible for the 80% dividends-received deduction for corporations and (2) to seek capital appreciation when consistent with its primary objective. To achieve its objectives, the Applicant will invest principally in a diversified portfolio of preferred and common stocks. Applicant will also seek to protect the value of its assets by using various risk management strategies, including government securities, financial futures contracts, stock and financial index futures contracts, options and other hedging techniques.

2. Applicant's shares may not be sold or be transferable to or be owned by, any person other than: A savings bank or savings and loan association which is organized under the laws of the State of

New York; a savings bank organized under the laws of the United States or a savings and loan association organized under the laws of the State of New York or of the United States which has been converted from a savings bank organized under the laws of the State of New York or results from the merger of such a converted institution to the extent permitted by the New York State Banking Department; or a pension trust, fund, plan or agreement participated in by one or more such savings banks or savings and loan associations to provide retirement benefits, death benefits or disability benefits and any or all of such benefits for any or all of its or their active officers and employees (the "Eligible Savings Institutions"). There are currently approximately 100 Eligible Savings Institutions in existence, with assets ranging from approximately \$50 million to approximately \$5 billion.

3. The Commission has previously granted the exemptions requested by Applicant to Institutional Investors Capital Appreciation Fund ("Capital Fund"), formerly known as Institutional Investors Mutual Fund, Inc., by orders dated April 14, 1953, August 8, 1955, and July 5, 1960 (Investment Company Act Releases No. 1856, No. 2213, and No. 3065, respectively), and to Institutional Investors Capital Reserve Fund, Inc., Institutional Investors Fixed Income Fund, Inc., and Institutional Investors Option Income Fund, Inc., by order dated August 18, 1983 (Investment Company Act Release No. 13445). This group of funds, referred to as the Institutional Investors Mutual Funds or IIMF, will include the Applicant. The Commission's staff took a no-action position with respect to Institutional Investors Mutual Fund's arrangement whereby the assets of the IIMF funds were maintained in the custody and safekeeping of the investment adviser [Institutional Investors Mutual Funds (publicly available 2/10/86)]. Applicant believes that substantially the same circumstances which have made these exemptions appropriate in the case of the above-reference entities are present in the case of Applicant and thus warrant the extension of those exemptions to Applicant as requested.

4. Applicant will operate under the same circumstances and be subject to the same restrictions which currently apply to the IIMF funds: (a) Applicant's board of directors shall consist exclusively of trustees or senior officers of eligible savings institutions, or officers of Applicant or Savings Banks Trust Company ("SBTC"); (b) Pursuant to its by-laws, Applicant submits itself to supervision and periodic examination by the New York Banking Department at

such times and in such manner as the Superintendent of Banks shall provide; and (c) Applicant will enter into contracts for investment advisory, transfer agency and registrar services, and custodial services, respectively, with SBTC.

5. SBTC is a New York commercial bank organized under the Banking Law of the State of New York. SBTC was founded under the auspices of the Savings Banks Association of New York State, pursuant to specific statutory authority in the New York Banking Law, to provide commercial banking, trust services and liquidity to New York savings banks. All the capital stock of SBTC is owned exclusively by Eligible Savings Institutions, and historically SBTC's business has been directed almost exclusively at such institutions. SBTC's board of directors consists entirely of officers or trustees or such institutions and officers of SBTC. SBTC does not conduct a banking business with the public.

6. Section 24(d) of the 1940 Act provides that the intrastate offering exemption contained in section 3(a)(11) of the Securities Act of 1933 (the "1933 Act") shall not apply in the case of securities issued by an investment company. In the absence of section 24, the intrastate offering exemption would apply to sales of Applicant's shares, since Applicant is incorporated in New York State, will do business only within New York State, and may in practice sell its securities only to savings institutions or their branches located within New York State. Applicant will distribute to each eligible savings institution which invests in its shares, a copy of the Applicant's registration statement filed with the Commission on Form N-1A, which contains the information which the Applicant would be required to furnish were it to be registered under the 1933 Act. This fact, combined with the relative sophistication of the savings institutions eligible to purchase shares of Applicant, outweighs any advantage of additional registration under the 1933 Act. The private placement exemption also may be available to Applicant in light of the small number of Eligible Savings Institutions and their size and sophistication.

7. Applicant does not propose to issue a prospectus to investors nor to sell its shares to or through a principal underwriter, as required by section 22(d) of the 1940 Act. Only approximately 100 savings institutions are eligible investors and it is estimated the actual number of shareholders in Applicant at any time will be substantially less than that

number. As noted above, Applicant will provide Eligible Savings Institutions with copies of its registration statement. In light of the sophisticated character and limited number of the eligible savings institutions, as well as the supervisory powers of the State Banking Department over Applicant's affairs, Applicant believes that the cost of preparation of a prospectus would constitute an unnecessary burden on Applicant and its shareholders with no material benefit to the Eligible Savings Institutions. Also, for the reasons noted above in connection with the requests for exemption from section 22(d), compliance with the provisions of section 20(a) of the 1940 Act and Rule 20a-1 thereunder, with respect to solicitation of proxies, consents or authorizations from shareholders, would impose an undue and unnecessary expense on Applicant and its shareholders without commensurate benefit.

8. SBTC, Applicant's adviser, is effectively owned and managed by the shareholders of Applicant. Moreover, the investments which Applicant is mandated to pursue comport with the restrictions set by the New York State Banking Law and the State Banking Department acting thereunder. Given these safeguards, Applicant believes that it should be exempt from the provisions of section 10(a) of the 1940 Act, to permit more than 60% of Applicant's board of directors to be composed of persons affiliated with SBTC and from the provisions of section 15(c) of the 1940 Act concerning annual approval of Applicant's advisory contract with SBTC.

9. As part of its sales and investment efforts, Applicant wishes to be free from time to time to acquire, from Eligible Savings Institutions that may own 5% or more of its outstanding shares, securities of a character in which it may legally invest, in exchange for shares of Applicant having a net asset value equal to the market value of the securities. (Any necessary cash adjustment for fractional shares shall be paid by the Eligible Savings Institution.) Such "swaps" of securities for fund shares may permit Applicant and shareholders alike to avoid brokerage commissions. Any transfer taxes will be paid by the institution making the exchange. The various limits on the organization and operation of Applicant, as described above, will prevent any affiliated person from using this exchange provision to the detriment of Applicant or its shareholders generally. Moreover, during the nearly 30 years of operation of Capital Fund it has been the practice

of the Eligible Savings Institutions to elect no more than one director from among the officers or trustees of any one such institution. It is fully expected that this practice will continue with respect to Applicant hereunder. While it is not anticipated in the near term that exchanges will occur frequently where a holder of more than 5% of Applicant's shares will be involved, Applicant does not believe that, if the occasion arises, Applicant should be barred from such a transaction. Indeed, the need for a general exemption from section 17(a)(1) may become increasingly important if the current trend of savings bank mergers and reorganizations lead to fewer institutions holding an increased percentage of the shares of Applicant.

10. SBTC, which serves as investment adviser to Applicant, will assume the safekeeping of Applicant's assets. This arrangement would subject Applicant and its custody arrangement to the provisions of Rule 17f-2 under the Act. SBTC and the Applicant have a special relationship to the institutions that will invest in the Applicant, and that relationship warrants special consideration in this case. Applicant was established for the benefit of and is owned by Eligible Savings Institutions and their employee benefit plans. Applicant is managed by representatives of such banks, and the day-to-day operation of Applicant is administered by SBTC, another instrumentality of the Eligible Savings Institutions. Also, Applicant, like SBTC, is subject to periodic examination by the New York State Banking Department.

11. Applicant's by-laws provide that the computation of the asset value of each of Applicant's shares as of the close of the New York Stock Exchange next succeeding receipt of a request for redemption shall apply only to the extent of 2,500 shares or 10% of the total number of shares owned on the date of giving such notice by the holder presenting shares for redemption, whichever is greater, with continuing like computations on each succeeding business day of any excess number of shares, as to which notice was received, subject to the same maximum, until the asset value of the total number of shares tendered has been computed. Payment is required to be made within seven business days after each such computation. Applicant's by-laws further limit the right of redemption and payment by vesting in the board of directors power to fix other periods if it is contrary to the best interest of Applicant and its shareholders to commit Applicant to an earlier

repurchase. However, such determination is to be made by the board of directors only when a prior offer remains unaccepted or when by reason of the number of shares offered or the condition of the securities markets, there is doubt as to the ability of Applicant to liquidate sufficient assets to raise the necessary funds within an earlier time without undue sacrifice, and the existence of extraordinary conditions require adoption of an emergency measure.

12. The proposed limitations on redemption of Applicant's shares are necessary because the Eligible Savings Institutions, by virtue of the business they conduct, have a natural similarity of reaction to market conditions and thus may be influenced toward a common investment policy as a result of prevailing conditions or unusual occurrences. Under such circumstances the possibility exists that substantial requests for redemption may be made at or about the same time. The Eligible Savings Institutions have recognized that it is in their common interest to prevent any unnecessary sacrifice of assets, by granting Applicant's board of directors some discretion with respect to the liquidation of assets to meet redemptions where the existence of extraordinary conditions requires adoption of emergency measures. Applicant submits that redemption of shares in installments, as indicated, or the right to defer redemptions under extraordinary conditions, would not be prejudicial to the protection of the investors or the policies of the 1940 Act.

Applicant's Conclusions of Law:

Given the relationship of Applicant to its shareholders and to its adviser, there can be little, if any, risk of conflict of interest between them. Applicant will be wholly-owned and managed by Eligible Savings Institutions, and will conduct its operations within the statutory limitations and under the supervision of the New York State Banking Department. Moreover, the limited number and the investment expertise and sophistication of the Eligible Savings Institutions will minimize the need for certain forms of regulation required of widely-held investment companies. Applicant believes that the successful history of operations of Capital Fund during the past three decades demonstrates that it is appropriate, in the public interest and consistent with the protection of investors and the purposes of the 1940 Act, for the Commission to grant an order extending similar relief to Applicant.

Applicant's Conditions: 1. Applicant undertakes that it will advise Eligible Savings Institutions that a condition of purchase of shares of Applicant is that the purchasing Eligible Savings Institution not advertise to the depositing public that any individual depositor will receive the benefits of investment in a mutual fund by reason of the Eligible Savings Institution having invested in Applicant.

2. Applicant agrees that the following conditions may be imposed by any order of the Commission granting exemptive relief from section 17(a)(1) of the Act:

(a) The investment adviser will prepare a written report for the board of directors of Applicant evaluating any securities which may be offered in exchange for shares of Applicant prior to authorization of such transaction by the board of directors of Applicant;

(b) Each such transaction will be specifically approved by the board of directors of Applicant prior to execution of such transaction;

(c) Applicant will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any such transaction occurs, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the securities purchased, the identity of the person on the other side of the transaction, the terms of the transaction, and the information of materials upon which the board of directors' actions was taken;

(d) The acquisition of any security by Applicant pursuant to any such transaction will be consistent with the investment objectives and policies of Applicant and, in the opinion of the board of directors, with the interests of Applicant and its shareholders;

(e) The terms of each such transaction will be reasonable and fair to the shareholders of Applicant in the opinion of its board of directors and will not involve overreaching on the part of any person concerned; and

(f) No commission, fee, spread or other remuneration will be received by any party in connection with the transaction.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-1611 Filed 1-26-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24561]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 21, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 16, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Jersey Central Power & Light Company, et al. (70-7058)

Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, an electric utility subsidiary of General Public Utilities Corporation, a registered holding company, and Energy Initiatives, Incorporated ("EI"), 95 Madison Avenue, Morristown, New Jersey 07960, a wholly owned subsidiary of JCP&L, have filed a post-effective amendment to the application-declaration previously filed pursuant to sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rules 45, 50(a)(3) and 50(a)(5) thereunder.

By order dated September 4, 1986 (HCAR No. 24184), EI was authorized, among other things, to effect secured and unsecured borrowings during the period ending December 31, 1987 from vendors and suppliers of equipment, institutional lenders and commercial banks. Such borrowings were not to exceed \$2 million outstanding at any

one time and were to bear interest at rates not in excess of 125% of the prime rate generally in effect at the time of such borrowing.

EI now proposes to make the previously authorized secured and unsecured borrowings from time to time through December 31, 1988, but in a reduced aggregate amount not to exceed \$1 million outstanding at any one time. In all other respects, the transactions as previously approved herein will remain unchanged.

Western Massachusetts Electric Company (70-7417)

Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, Springfield, Massachusetts 01089, a subsidiary of Northeast Utilities, a registered holding company, has filed a post-effective amendment to its application pursuant to 6(b) of the Act and Rule 50(a)(5) thereunder.

By order dated November 10, 1987 (HCAR No. 24498), WMECO was authorized to issue and sell up to 2,400,000 shares of Class A money market preferred stock ("Preferred"), at \$25 par value per share, on or before December 31, 1987, with an aggregate par value of \$60 million, under an exception from competitive bidding.

To date WMECO has not sold any of the Preferred. WMECO now proposes to issue and sell the Preferred on or before June 30, 1988.

Northeast Utilities (70-7456)

Northeast Utilities ("Northeast"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company, has filed an application pursuant to section 9(c)(3) of the Act.

The State of Connecticut ("State") is empowered by statute to make investments, in concert with private investors, for the purpose of providing venture capital to companies based in Connecticut. Connecticut Seed Ventures Limited Partnership ("Partnership") has been formed by the State and certain Connecticut businesses to administer a \$10 to \$15 million fund to be used for venture capital investments.

The initial capitalization of the Partnership is \$10 million, of which amount \$5 million will be provided through the Connecticut Product Development Corporation, a State agency created for the purpose of sponsoring economic development in Connecticut. The remainder will be contributed by Connecticut based private-sector businesses. The Connecticut Light & Power Company, an operating-utility subsidiary of Northeast,

is the largest electric and gas utility company in Connecticut.

Northeast proposes to invest \$250,000 to acquire a 2.5% share in the Partnership. Although Northeast's initial share may be subject to variation, its voting share may never exceed 4.9% of the votes eligible to be cast on any matter. Northeast further will not, directly or indirectly, own, control or hold with power to vote 5% or more of the voting securities of the Partnership.

The Connecticut Light & Power Company (70-7459)

The Connecticut Light & Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, a wholly owned electric and gas subsidiary of Northeast Utilities ("Northeast"), a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act and Rule 16 thereunder.

CL&P proposes to acquire 159 shares of the initial 1,000 shares of Class A common stock ("Class A"), at \$1.00 (Canadian) per share, of Alberta Northeast Gas Limited ("Alberta"), a Canadian corporation organized by Northeast Gas Markets, Inc., a nonassociated corporation. Alberta was organized for the purpose of purchasing Canadian gas for resale and export to United States utilities.

Alberta includes as its members CL&P and 18 other utility companies serving customers in New York, New Jersey and New England (collectively, "Participants") and Canadian natural gas producers and suppliers (collectively, "Suppliers"). Alberta will enter into gas purchase contracts with the Suppliers and gas sales agreements with the Participants for the purpose of facilitating and intergating gas supply transactions between the parties. It is anticipated that these gas supplies will be shipped to the Participants primarily through the Iroquois Gas Transmission System, a proposed pipeline which is intended to extend from the U.S.-Canada border through the northeastern United States. The remainder of the gas will be delivered by the Tennessee Gas Pipeline System, a division of Tenneco, Inc., also a nonassociated corporation. Alberta will not construct, own or operate any physical facilities.

Northeast has announced publicly that it plans to divest CL&P's gas business on or before December 31, 1992 by means of a spin-off to Northeast shareholders. The divestiture will provide for CL&P interest in Alberta to be transferred to the company acquiring CL&P gas business which is not retained by CL&P.

The Connecticut Light and Power Company (70-7466)

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, an electric and gas subsidiary of Northeast Utilities, a registered holding company, has filed an application pursuant to section 6(b) under the Act and Rules 50 and 50(a)(5) promulgated thereunder.

CL&P proposes to issue and sell up to \$350 million principal amount of its first and refunding mortgage bonds ("Bonds"), in one or more series, from time to time through December 31, 1989. Each series of Bonds will have a maturity of five to thirty years. The interest rate and the price of the Bonds will be determined by the competitive bidding procedures of Rule 50 of the Act, as modified by the Commission's Statement of Policy, dated September 2, 1982 (HCAR No. 22623). In addition CL&P may amend its application-declaration to seek an exception from the competitive bidding requirements of Rule 50 so that it may offer the Bonds through a negotiated public offering or private placement.

System Energy Resources, Inc. (70-7467)

System Energy Resources, Inc. ("SERI"), P.O. Box 23070, Jackson, Mississippi 39225-3070, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act.

SERI has, pursuant to prior Commission authorization, entered into a Restated and Amended Fuel Lease dated as of August 7, 1987 ("Fuel Lease"), with Port Gibson Energy, Inc., ("Port Gibson") under which SERI leases from Port Gibson the nuclear fuel, including facilities incident to its use ("Nuclear Fuel"), used to satisfy a portion of the fuel requirements of Unit No. 1 at SERI's Grand Gulf Nuclear Generating Station ("Grand Gulf 1"), (HCAR No. 24439; August 12, 1987). The Fuel Lease is currently scheduled to terminate on February 29, 1988.

Port Gibson has financed these obligations under a Restated and Amended Credit Agreement, dated as of August 7, 1987 ("Credit Agreement"). Port Gibson, has advised SERI that it is willing to enter into a new Restated and Amended Credit Agreement ("Amended Credit Agreement") with Union Bank of Switzerland ("UBS"), certain other banks ("Banks") and UBS, as agent ("Agent") for the Banks. The Amended Credit Agreement will terminate on August 31, 1988. The Amended Credit Agreement provides that the current

maximum obligation of Port Gibson to make payments for Nuclear Fuel is \$164 million at any one time outstanding, however, up to \$165 million of Nuclear Fuel may be paid for at Port Gibson's option. The Credit Agreement currently provides for a commitment of \$174 and \$175 million, respectively.

Upon execution and delivery of the Amended Credit Agreement, Port Gibson is willing to enter into a new Restated and Amended Fuel Lease ("Restated and Amended Fuel Lease") in order to extend the term of the leasing arrangement with Port Gibson to August 31, 1988. Under the terms of the Restated and Amended Fuel Lease, Port Gibson will make payments to suppliers, processors and manufacturers, necessary to carry out the terms of SERI's contracts for Nuclear Fuel for Grand Gulf 1 or SERI will make such payments and be reimbursed by Port Gibson. The Agent and the Bank will continue to receive an assignment of the rents and certain other obligations under the Restated and Amended Fuel Lease. The Agent and the Banks will also continue to receive a security interest in the Nuclear Fuel under a new Restated Amended Security Agreement.

SERI may terminate the Restated and Amended Fuel Lease at any time. Port Gibson may terminate the Restated and Amended Fuel Lease under certain circumstances. The Fuel Lease requires that SERI consent to Port Gibson's entry into the Amended Credit Agreement.

Middle South Utilities, Inc. (70-7468)

Middle South Utilities, Inc. ("MSU"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, has filed a declaration pursuant section 12(b) of the Act and Rule 45 thereunder.

Pursuant to prior Commission authorization, Middle South entered into a Restated and Amended Guaranty, dated as of August 7, 1987 ("Guaranty"), with Port Gibson Energy, Inc. ("Port Gibson"), under which it unconditionally guaranteed the performance of the obligations of System Energy Resources, Inc. ("SERI"), subsidiary of MSU, with respect to a lease of nuclear fuel ("Nuclear Fuel"), used to satisfy a portion of the fuel requirements of Unit No. 1 at SERI's Grand Gulf Nuclear Generating Station ("Grand Gulf 1"), under the terms of a Restated and Amended Fuel Lease ("Fuel Lease"), dated as of August 7, 1987, between SERI and Port Gibson. (HCAR No. 24441, August 12, 1987).

The maximum commitment of Port Gibson to make payments in respect of Nuclear Fuel is currently \$174 million at

any one time outstanding; however, up to \$175 million of Nuclear Fuel may be paid for at Port Gibson's option. It is now proposed by SERI and Port Gibson in a companion filing (File No. 70-7467) to decrease such commitments to \$164 and \$165 million, respectively. MSU has been advised that Port Gibson proposes to enter into a new Credit Agreement ("Amended Credit Agreement") with Union Bank of Switzerland, ("UBS") and certain other banks ("Banks"), and UBS, as Agent for the Banks, ("Agent"). Upon execution and delivery of the Amended Credit Agreement, Port Gibson is willing to enter into a Restated and Amended Fuel Lease in order to extend the terms of the leasing arrangement of Port Gibson to coincide with the expiration of the Amended Credit Agreement which is August 31, 1988. Pursuant to the terms of the Amended Credit Agreement, the Banks will continue to receive an assignment of Port Gibson's rights under the Guaranty pursuant to a new Restated and Amended Assignment Agreement.

MSU proposes to enter into a new Restated and Amended Guaranty ("Restated and Amended Guaranty") with Port Gibson to continue to guarantee the obligations of SERI. MSU will also acknowledge notice and consent to the assignment of Port Gibson's rights under the Restated and Amended Guaranty to the Agent.

The Columbia Gas System, Inc. (70-7480)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, has filed an application-declaration pursuant to section 6(a), 7, 9(a), 10, and 12 of the Act and Rules 43 and 50(a)(5) thereunder.

Columbia proposes to issue and exchange an amount of its common stock, \$10 par value, valued at \$11,017,020 for the 262,310 outstanding shares of Lynchburg Gas Company's ("Lynchburg") common stock. For purposes of the transaction, Lynchburg's common stock will be valued at \$42 per share and Columbia's common stock will be valued at its average closing price on the New York Exchange Composite Tape for the five days ending with the Friday preceding closing.

The consummation of the proposed transaction is conditioned upon the prior occurrence of certain events including the execution and delivery by Columbia and Lynchburg, prior to February 1, 1988, of a definitive agreement covering the transaction, approval by Lynchburg's shareholders, receipt of all appropriate governmental and/or contractual consents and orders and

receipt by Lynchburg's Board of Directors of a "Fairness" opinion from an investment banking firm.

National Fuel Gas Company (70-7462)

National Fuel Gas Company ("National Fuel"), 30 Rockefeller Plaza, New York, New York 10020, a registered holding company, has filed a declaration pursuant to section 12(c) of the Act and Rule 42 thereunder.

National Fuel proposes to purchase up to \$25 million of its issued and outstanding shares of common stock, no par value, in open market transactions from time to time during a two-year period beginning as of the date an order is granted. Purchases would be made only if National Fuel determined that it was in its best interest to do so. Funds for such purchases would be obtained solely from internal sources.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-1613 Filed 1-26-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster Loan Area No. 23071

Republic of the Marshall Islands; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 16, 1988, I find that Kwajalein Atoll in the Republic of the Marshall Islands constitutes a disaster loan area because of damage from severe winds, high waves, and flooding caused by Tropical Storm Roy which occurred on or about January 9, 1988. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on March 18, 1988 and for economic injury until the close of business on October 17, 1988 at: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, P.O. Box 13795, Sacramento, California 95853, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000

	Percent
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	9.000

The number assigned to this disaster is 230706 for physical damage and for economic injury the number is 659800.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: January 20, 1988.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88-1600 Filed 1-26-88; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of North Carolina, will hold a public meeting at 2:00 p.m. on Friday, February 26, 1988, at the Charlotte Chamber of Commerce, 129 West Trade Street, Charlotte, North Carolina 28202, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Gary A. Keel, District Director, U.S. Small Business Administration, 222 South Church Street, Suite 300, Charlotte, North Carolina 28202, (704) 371-6561.

January 15, 1988.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 88-1601 Filed 1-26-88; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of Lower Rio Grande Valley of Texas, will hold a public meeting at 1:30 p.m. Tuesday, February 16, 1988, at the Board Room of Pan American University, Edinburg, Texas, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Carlos Martinez, Jr., Acting District Director, U.S. Small Business

Administration, 222 E. Van Buren, Suite 500, Harlingen, Texas—(512) 427-8625.

January 15, 1988.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 88-1602 Filed 1-26-88; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2301; Amendment No. 2]

Declaration of Disaster Loan Area; Puerto Rico

The above-numbered Declaration (52 FR 49243), as amended (52 FR 1534), is hereby further amended in accordance with the Notice of Amendment to the President's declaration, dated January 6, 1988, to include the Municipality of Santa Isabel in the Commonwealth of Puerto Rico because of damage from severe storms and flooding beginning on November 24, 1987. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on February 16, 1988 and for economic injury until the close of business of September 19, 1988.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: January 12, 1988.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88-1657 Filed 1-26-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0294]

Issuance of License To Operate as a Small Business Investment Company; Revelation Resources, Ltd.

On October 7, 1987, a notice was published in the *Federal Register* (52 FR 37568), stating that Revelation Resources, Ltd. (RR Ltd.), located at 2929 Allen Parkway—Suite 1705, Houston, TX 77019 had filed an application with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1987), for a license to operate as a small business investment company under the provisions of section 301(c) of the Small Business Investment Act of 1958, as amended.

The period for comment expired November 6, 1987, and no significant comments were received.

Notice is hereby given that considering the application and other information, SBA had issued License No. 06/06-0294 to RR Ltd. effective January 12, 1988.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: January 21, 1988.

[FR Doc. 88-1656 Filed 1-26-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intent To Prepare an Environmental Impact Statement; Bartow County, GA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Bartow County, Georgia.

FOR FURTHER INFORMATION CONTACT:

Thomas D. Myers, District Engineer, Federal Highway Administration, Suite 300, 1720 Peachtree Road, NW., Atlanta, Georgia 30367, telephone (404) 347-3041, or Frank L. Danchetz, State Environmental/Location Engineer, Georgia Department of Transportation, Office of Environment/Location, 3993 Aviation Circle, Atlanta, Georgia 30336, telephone (404) 696-4634.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Georgia Department of Transportation (Georgia DOT) will prepare an environmental impact statement (EIS) on a new location proposal for U.S. Route 411 beginning at the U.S. 411/ S.R. 20 interchange with U.S. 41 and extending easterly to a point on I-75 approximately 1.0 mile south of the existing U.S. 411 interchange with I-75.

The proposed roadway would be four lanes (two lanes in each direction of travel separated by a median). The project is proposed to be constructed on a minimum right-of-way width of 400 feet and would be designed as a fully controlled access facility. The existing U.S. 411/S.R. 20 interchange with U.S. 41 would be reconstructed to provide access to and from the proposed new U.S. 411 highway section. Also, at the I-75 terminus, a full-directional interchange would be constructed, thus providing access to and from I-75 and the new U.S. 411 highway section. Total length of the proposed new section of U.S. 411 is approximately 6.7 miles.

Alternatives under consideration include: (1) The new location proposal

for U.S. 411 as described above and (2) the no-build alternative.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies, and the U.S. Army Corps of Engineers has been requested as a cooperating agency. In addition, a public hearing will be held. Public notice will be given of the time and place of the hearing. A draft EIS will be made available for public and agency review and comment.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action on the EIS should be directed to the FHWA at the address provided above.

The Catalog of Federal Domestic Assistance Program Number is 20.250, *Highway Research Planning and Construction*. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Tom Myers,

District Engineer, Federal Highway Administration, Atlanta, Georgia.

[FR Doc. 88-1573 Filed 1-26-88; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Rulemaking, Research and Enforcement Programs; Meetings

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

DATES: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research, and enforcement programs will be held on March 10, 1988, beginning at 9:45 a.m. Questions relating to the agency's rulemaking, research, and enforcement programs, must be submitted in writing by February 26, 1988. If sufficient time is available, questions received after the February 26 date may be answered at the meeting. The individual, group or company submitting a question does not have to be present for the question to be answered. A consolidated list of the

questions submitted by February 26, and the issues to be discussed, will be mailed to interested persons by March 4, 1988, and will be available at the meeting.

ADDRESS: Questions for the March 10 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW., Washington, DC 20590. The public meeting will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on March 10, 1988. The meeting will begin at 9:45 a.m., and will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street SW., Washington, DC 20590.

Issued on: January 22, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-1665 Filed 1-26-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1987 Rev., Supp. No. 11]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Chilton Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the

Treasury to Chilton Insurance Company under the United States Code, Title 31, sections 9304 to 9308, to quality as an acceptable surety on Federal bonds is terminated effective this date.

The Company was last listed as an acceptable surety on Federal bonds at 52 FR 24608, July 1, 1987.

With respect to any bonds currently in force with Chilton Insurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Dated: January 22, 1988.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 88-1634 Filed 1-26-88; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1987 Rev., Supp. No. 10]

Surety Companies Acceptable on Federal Bonds; Van Tol Surety Co., Inc.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1987 Revision, on page 23954 to reflect this addition:

Van Tol Surety Company, Incorporated.

Business Address: 424 Fifth Street,

Brookings, SD 57006. Underwriting

Limitation: \$136,000. Surety

License #: SD. Incorporated in: South

Dakota. Federal Process Agents.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287-3918.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

Dated: January 15, 1988.

[FR Doc. 88-1635 Filed 1-26-88; 8:45 am]

BILLING CODE 4810-35-M

PRESIDENT'S COMMISSION ON PRIVATIZATION

Hearings

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-483), as amended, notice is hereby given that a meeting of the President's Commission on Privatization will be held.

DATES AND TIMES: January 28 and 29, 1988. Business Meeting—January 28 beginning at 10:00 a.m. Hearings January 28 beginning at 2:00 p.m. and January 29 beginning at 9:30 a.m.

ADDRESS: Room 1100 Longworth House Office Building, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Wiley Horsley, Commission Staff Manager, 1825 K Street NW, Suite 310, Washington, D.C. 20006, 202/634-6501.

SUPPLEMENTARY INFORMATION: The purpose of the business meeting is to discuss privatization options in contracting out (A-76), Agency for International Development Programs, Health Delivery and other matters. The purpose of the hearings is to hear witness testimony relating to asset sales, including Naval Petroleum Reserves, AMTRAK, and Postal Service. The business meeting and the hearings are open to the public.

James C. Miller III,

Director, Office of Management and Budget

[FR Doc. 88-1831 Filed 1-26-88; 11:34 am]

BILLING CODE 3110-01-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 17

Wednesday, January 27, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 1:00-3:00 p.m.

PLACE: African Development Foundation, 1625 Massachusetts Avenue NW., Suite 600, Washington, DC 20036.

DATE: Thursday, February 4, 1988.

STATUS: Open.

Agenda

1. Chairman's Report
2. President's Report
3. OTA Assessment
4. New Business
5. Old Business
6. Other

CONTACT PERSON FOR MORE

INFORMATION: Mrs. Janis McCollim, 673-3916.

Leonard H. Robinson, Jr.,
President.

[FR Doc. 88-1742 Filed 1-25-88; 1:35 pm]

BILLING CODE 6116-01-M

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 9:00 a.m., March 18, 1988.

PLACE: The Forbes Building, 60 Fifth Avenue, New York, NY 10011.

STATUS: Closed, pursuant to 5 U.S.C. 552 (b)(3)(1) 22 CFR 1302.4 (c) and (h) of the Board's rules (42 FR 9388, March 12, 1977).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government.

CONTACT PERSON FOR ADDITIONAL

INFORMATION: Bruce D. Porter, Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, NW., Washington, DC 20036.

Bruce D. Porter,
Executive Director.

[FR Doc. 88-1725 Filed 1-25-88; 10:44 am]

BILLING CODE 6155-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 11, Tuesday, January 19, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m., (eastern time) Monday, January 25, 1988.

CHANGE IN THE MEETING:

The Open Session of the Meeting has been Rescheduled to 9:30 a.m., (eastern time) Tuesday, January 26, 1988.

The Closed Session of the Meeting has been Canceled.

CONTACT PERSON FOR MORE

INFORMATION: Hilda D. Rodriguez, Executive Office (Acting), Executive Secretariat, (202) 634-6748.

Date: January 22, 1988.

Hilda D. Rodriguez,
Executive Officer (Acting), Executive Secretariat.

This Notice Issued January 22, 1988.

[FR Doc. 88-1729 Filed 1-25-88; 11:02 am]

BILLING CODE 6750-06-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, January 21, 1988 at 10:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
Certain High Geometric Surface Area Catalysts (Docket Number 1427).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth R. Mason, Secretary (202) 252-1000.

Kenneth R. Mason,
Secretary.

January 12, 1988.

[FR Doc. 88-1673 Filed 1-25-88; 9:31 am]

BILLING CODE 7020-02-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, February 2, 1988.

PLACE: Board Room (812A), Eighth Floor, 800 Independence Avenue SW., Washington, DC 20594.

STATUS: The first three items are open to the public. The last three items are closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

4761—Aircraft Summary Report: Israel Aircraft Industries IAI-1124A, N50SK, Operated by Singer Corporation-Kearfott Division, Redwater, Texas, April 4, 1986. (Calendared by Vice Chairman Goldman and Member Kolstad.)

4786—Marine Accident Report: Collision of the Commuter Ferries JACK W and JAMEY DOWNEY, Lower New York Bay, June 22, 1987

4674A—Highway Accident Report: Tractor-Semitrailer/ Intercity Bus Headon Collision, Interstate 10, Beaumont, Texas, May 4, 1987

4740—Opinion and Order: Administrator v. Gentile, Docket SE-7550; disposition of the appeals of both parties. (Calendared by Chairman Burnett.)

4771—Opinion and Order: Administrator v. McHugh and E1 Wazzan, Docket SE-7513; disposition of the appeals of the Administrator and Respondent McHugh. (Calendared by Member Nall.)

4749—Opinion and Order: Administrator v. Nazimek, Docket SE-6759; disposition of appeals of both parties. (Recalendared from discussion at December 8 Board Meeting)

FOR MORE INFORMATION CONTACT: Bea Hardesty (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

January 22, 1988.

[FR Doc. 88-1675 Filed 1-25-88; 9:32 am]

BILLING CODE 7533-01-M

30 CFR Part 75

Wednesday
January 27, 1988

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Roof, Face and Rib Support; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Roof, Face and Rib Support

January 4, 1988.

AGENCY: Mine Safety and Health Administration (MSHA), Labor.**ACTION:** Final rule.

SUMMARY: This rule revises the Mine Safety and Health Administration's existing safety standards for roof, face and rib support in underground coal mines. The revisions update existing provisions consistent with advances in mining technology, eliminate duplicative and unnecessary standards, provide alternative methods of compliance and reduce paperwork requirements where possible.

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA (703) 235-1910.

SUPPLEMENTARY INFORMATION:**I. Background**

The Mine Safety and Health Administration (MSHA) is revising its existing safety standards for roof, face and rib support at underground coal mines. These revisions are promulgated pursuant to section 101 of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-173 as amended by Pub. L. 95-164, 91 Stat. 1291 (30 U.S.C. 811).

This final rule is part of MSHA's comprehensive review of the underground coal mining standards in 30 CFR Part 75. On September 2, 1983, MSHA published a notice in the *Federal Register* which announced the availability of its preproposal draft and scheduled public conferences (48 FR 40165). Public conferences were held October 25, 1983, in Salt Lake City, Utah, and October 27, 1983, in Charleston, West Virginia. These conferences were well-attended by representatives of the mining community. MSHA received written comments regarding its preproposal draft from all segments of the coal mining community.

After reviewing the comments received in response to the preproposal draft, MSHA published a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* (50 FR 41784) on October 15, 1985. On January 17, 1986, MSHA published a notice in the *Federal Register* which outlined major issues raised by commenters to the proposed rule and scheduled public hearings (51

FR 2525). Public hearings were held on February 24, 1986 in Pittsburgh, Pennsylvania, February 25, 1986 in Lexington, Kentucky, and February 27, 1986 in Denver, Colorado. All three hearings were well-attended. A transcript of the proceedings was made available for public inspection. Following the public hearings, interested persons were allowed to submit supplementary statements and data until the record closed on March 21, 1986. During this rulemaking process, MSHA received written or oral statements from all segments of the mining community. The Agency's final rule addresses the comments received and is consistent with the goals of Executive Order 12291, the Regulatory Flexibility Act and the Paperwork Reduction Act.

II. Discussion of Final Rule**A. General Discussion**

Falls of roof, face and rib are the leading cause of injuries and death in underground coal mines. For the years 1979-1986, there were 630 fatalities in underground workings of coal mines of which 294, or 47 percent, were the result of falls of roof, face, and rib. For those same years, there were 90,534 total injuries of which 8,415, or 9.3 percent, were due to falls of roof, face, and rib. MSHA has determined that injuries from falls of roof, face, and rib are over eight times as likely to be fatal as underground injuries from other causes. Prevention or control of roof falls continues to be a difficult task because of the variety of conditions encountered in coal mines that can affect the stability of various types of strata. However, technological advancements have aided in reducing the hazards associated with falls of roof, face and ribs. This final rule reflects these advancements and requires certain measures and practices that will increase the safety protection afforded to miners. The rule also simplifies existing standards and reduces paperwork requirements where possible.

The final rule revises the existing standards for roof control in 30 CFR Part 75, and addresses hazards related to roof falls by establishing: (1) Safety standards for roof support that apply to all underground coal mines; and (2) requirements for a roof control plan for each mine which specifies the roof control practices appropriate for the unique conditions of the mine. As structured in this rule, each roof control plan is subject to approval by the appropriate MSHA District Manager, based on criteria contained in the final rule.

The existing roof control standards contain extensive criteria for evaluating and approving roof control plans which resulted in unduly complex roof control plans. Although the final rule retains the roof control plan concept, it reduces the roof support practices required to be addressed in each plan. Criteria no longer necessary are deleted and criteria that are generally applicable to all mines are changed to mandatory standards. When applicable to most or all mines, matters previously addressed by MSHA policy have also been included in the final rule as mandatory standards. With these changes, roof control plans will be less complex.

B. Section-by-Section Discussion**Section 75.200 Scope.**

In response to commenters, the final rule includes a scope provision which clarifies that roof support systems installed prior to the effective date of the new standards will not have to be changed, so long as they continue to safely control the roof, face and ribs. This provision assists in defining operator compliance responsibilities under the new standards.

Section 75.201 Definitions.

The term "automated temporary roof support (ATRS) system" is defined in the final rule to clarify the provisions of § 75.209. ATRS systems are devices that provide temporary roof support for persons who would otherwise be exposed to unsupported roof during the process of installing roof supports. One commenter suggested that this term be changed to "remote mechanical roof support," indicating that this more accurately describes the equipment. The term "automated temporary roof support system" has been used throughout the mining industry since the mid-1970's to distinguish between manually installed temporary supports and those temporary supports established by a machine operated from a protected location.

The definition of "pillar recovery," which is derived from existing § 75.200-11, is "any reduction in pillar size during retreat mining." Some commenters suggested that splitting pillars to gain access to an otherwise inaccessible pillar should not be considered pillar recovery since this activity does not create the conditions addressed by standards governing pillar recovery. This suggested exception is not adopted in the final rule because it is overly broad. In some circumstances, splitting a pillar to gain access to an inaccessible one does involve the danger of roof falls intended to be addressed by the pillar

recovery standards of § 75.207.

However, MSHA recognizes that this is not always the case. For example, if a pillar is split in a location away from a mined-out area, it may be unnecessary to have all the breaker posts and roadside radius posts required by the pillar recovery standards. To account for such exceptions, the pillar recovery standards allow this situation to be addressed in mine roof control plans.

The proposed definition for notching is not retained since this term is not used in the final rule.

Section 75.202 Protection from falls of roof, face and ribs.

The final rule retains the requirement of existing § 75.200 that persons be protected from the hazard of falls from the roof, face or ribs. Historically, falling material from the roof, the point of extraction, and the walls of entries in coal mines has been the leading cause of fatalities in the industry. For clarity, the final rule applies to all "areas where persons work or travel," replacing the existing requirement that this protection be afforded in all "active underground roadways, travelways and working places."

One commenter suggested that the phrase "coal or rock outbursts" be added to this standard because this problem can be controlled. MSHA agrees that the frequency and seriousness of coal or rock bursts, which are violent releases of energy from rock or coal, can be minimized through mining methods such as proper pillar design or prefracturing areas before they are mined. The phrase "coal or rock bursts" is included in the final rule to clarify that persons are to be protected from coal or rock bursts as well as hazards related to falls of roof, face, or ribs. The more general term "burst" has been adopted in the final rule since the term "outbursts" refers to eruptions of coal or rock associated with gas pressures. In coal mines, the explosive breaking of coal or rock can be related to ground pressure as well as sudden releases of gas. The term "burst" includes both of these conditions.

Paragraph (b) clarifies the existing general prohibition against work or travel under unsupported roof. The final rule specifies that this is done only in accordance with the new standards.

One commenter recommended that the standard prohibit persons from going beyond permanent supports for any reason, suggesting that any language providing for an exception be deleted. Accident and fatality statistics continue to indicate that the majority of fatalities from roof, face and rib falls occur under unsupported roof and in temporarily

supported areas. A primary objective of the final rule is to reduce the incidence of these accidents by prohibiting miner exposure to unsupported roof to the extent possible. However, a prohibition against all exposure to unsupported roof would be impractical since some exposure is inherent when temporary supports are manually installed in unsupported areas.

Section 75.203 Mining methods.

This section establishes basic safety requirements for mining methods. Paragraphs (a), (c) and (e) of this section are derived from existing §§ 75.200-7(c)(2), 75.201 and 75.201-1 while paragraphs (b) and (d) are new.

Paragraph (a) prohibits mining methods that expose persons to unusual dangers from falls caused by excessively wide openings or improper pillar recovery and requires that pillar dimensions be compatible with effective control of the roof, face and ribs and coal or rock bursts. One commenter suggested that the design of pillars, as well as their dimensions be referenced by the standard. MSHA's intention is that the requirement for compatible pillar dimensions include pillar design.

Paragraph (b) requires that a sightline or other method of directional control be used to maintain conformance with mining projections in entries, rooms, crosscuts and pillar splits. This practice helps ensure that openings are developed as planned and pillar dimensions are accurately maintained. The use of these controls also minimizes the possibility of unintentionally cutting into abandoned areas in the mine or adjacent mines, either of which may contain dangerous accumulations of gas or water.

In response to commenters, the proposed phrase "a method of directional control" has been replaced with the phrase "a sightline or other method of directional control." The addition of the term "sightline" will provide for a defined means of directional control, while the standard will continue to provide flexibility for the use of other types of directional controls that are as effective as sightlines.

Paragraph (c) requires that sidecuts be started only from areas that are supported in accordance with the roof control plan. Starting sidecuts in areas not yet supported can unnecessarily expose miners to unsupported roof and result in excessively wide openings which increase the potential for a roof fall.

Several commenters stated that the proposed provision which specified that the area from which sidecuts are started

be permanently supported would prohibit use of safe mining systems such as continuous-mining machines with integral roof bolters and remote-control mining machines. These commenters suggested that because of the variety of situations that can arise, the proposed phrase, "permanent support" should be replaced with the phrase "supported in accordance with the roof control plan." The final rule adopts this approach to accommodate the situations where the installation of permanent supports would not be necessary before beginning a side cut. Consistent with this change, the proposal to permit "notching" if roof supports would be damaged when starting a sidecut has also been deleted, since this situation will also be addressed in the roof control plan.

Paragraph (d) prohibits mining into an unsupported area of active workings of a mine, except when the area being mined into is inaccessible. This exception recognizes that when a fall has made an area inaccessible it may be more hazardous to clean up and support the fall area than it would be to mine around it.

One commenter suggested that mining into unsupported areas be permitted whenever necessary to facilitate ventilation, regardless of accessibility to the unsupported area. This exception, in MSHA's view, would be too broad. The Agency's intention is to allow mining into unsupported areas only when these areas are inaccessible.

Paragraph (e) specifies where additional roof support must be installed in openings that are wider than specified in the approved roof control plan. The final rule requires additional supports to be installed when the planned width of an opening is exceeded by more than 12 inches for a distance greater than 5 feet. This approach differs from the proposed rule, which related the need for additional supports in excessively wide openings to the spacing of permanent roof supports used in the area. Upon reconsideration, the Agency has concluded that linking the need for additional supports in wide openings to the spacing of permanent supports may result in excessively wide openings in which additional supports would not be required. The final rule reflects MSHA practice, which is to require additional support when the planned width is exceeded by more than 12 inches. This standard recognizes that errors occasionally occur during mining, while requiring excessively wide and potentially dangerous conditions to be corrected by installing additional

support. The final rule is not to be interpreted to allow a general practice of mining openings wider than specified in the roof control plan.

Commenters suggested that the final rule specify the type of support to be installed for excessively wide openings. Some recommended that only posts or other conventional supports be used as additional roof support, while others stated that additional roof support be installed, but does not limit the operator's method of compliance.

Commenters also suggested that additional roof support only be required when the "mined" width is exceeded, so that additional supports would not be required where sloughing of ribs has occurred. Due to the lack of support, excessively wide openings, whether unintentionally mined or caused by deterioration, present similar hazards from roof falls. Therefore, the standard requires that additional roof support be installed wherever excessively wide openings exist.

A provision which appeared in this section of the proposed rule would have required support to be installed across the openings at intersections. Commenters suggested that as a standard, this would have been too restrictive. Because the roof conditions and methods of controlling mine roofs at intersections vary from mine to mine, MSHA agrees that the proposed requirement for one row of posts installed on 5-foot centers across the opening may not be appropriate for all situations. Therefore in the final rule, this provision appears in § 75.222(e) as a criterion to be used in the formulation and approval of roof control plans.

Section 75.204 Roof bolting.

This standard is derived from existing § 75.202 and the existing criteria in § 75.200-7, except for paragraphs (b)(2), (f)(6), and (g) which are new. The standard sets out requirements for the design, use and testing of tensioned roof bolts and nontensioned grouted roof bolts. The standard also provides measures to protect against the introduction of untested roof bolting systems or ineffective roof bolts into underground coal mines.

Paragraph (a) provides that when the roof bolts and accessories to be used at a mine are of a type addressed in ASTM F432-83, "Standard Specification for Roof and Rock Bolts and Accessories," the operator must obtain a certification from the manufacturer. The certification

must verify that the roof bolts and accessories were manufactured and tested in accordance with the ASTM standards. The ASTM standards for roof bolts and accessories are consensus standards used throughout the United States for the design of roof bolt assemblies.

Requiring that the operator obtain a certification from the manufacturer eliminates the concern that mine operators would need to have the same knowledge of ASTM standards as manufacturers. Compliance with the final rule requires operators to have available for inspection a certification from the manufacturer that the bolts being used in the mine meet the ASTM specifications. This approach is consistent with the industry practice of manufacturers routinely furnishing such certification to the mine operator when requested to do so in a contract or purchase order. In addition, ASTM F432-83 specifies that the manufacturer is to provide such a certification upon request. Interested persons may obtain ASTM F432-83 from the publisher, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103. It may also be examined at any Coal Mine Safety and Health District or Subdistrict Office.

Paragraph (b) of this standard permits the use of roof bolts and accessories not addressed in ASTM F432-83, provided that they are effective. The effectiveness of alternative bolts or accessories must be demonstrated by their successful use under mining conditions similar to those where these bolts or accessories are to be used, or by their installation in a representative area of the mine under controlled conditions. Testing must be conducted in an area with conditions that are representative of those where the materials are expected to be used. Until testing demonstrates the effectiveness of these materials, access to the area must be controlled to permit entry only by those persons necessary for the testing process. This provision differs from the proposal which specified that roof bolts and accessories not meeting the ASTM standard could be used only if approved by the District Manager. Instead of this approach, the final rule more clearly reflects MSHA's intention that all roof bolts and accessories be tested, evaluated, and proven to be effective for the prevailing geological conditions in the mine before they can be used.

Several commenters suggested that roof bolts and accessories not addressed in the ASTM standards be prohibited, stating that no exception should be made to the requirement that roof bolts

be manufactured in accordance with the ASTM standards. An important objective of the final rule is to assure the quality and effectiveness of roof bolts. Consistent with this objective, as technology evolves the standard will allow for the use of materials which have been proven to be reliable and effective in controlling the mine roof. The final rule serves this purpose by maintaining flexibility for the introduction of improvements that can enhance miner safety.

Paragraph (c) requires that bearing plates be used with all roof bolts. MSHA experience indicates that bearing plates installed firmly against the roof or other bearing material are necessary to adequately support the roof when roof bolts are used in underground coal mines. Some commenters suggested that bearing plates not be required for grouted bolting systems and roof trusses because they are unnecessary. However, data gathered by MSHA and the Bureau of Mines, U.S. Department of the Interior, indicate that bearing plates are necessary to fully utilize the support capabilities of both tensioned and grouted roof bolts. While roof trusses do not utilize the normal donut, bell or embossed types of bearing plate, a truss bracket, which serves as a bearing plate, is used with these systems and would meet the requirements of this standard.

The final rule also addresses bearing plate size according to use. When bearing plates are used directly against the mine roof they must be at least 6 inches square or the equivalent. However, bearing plates 5 inches square or the equivalent are permitted under the final rule where the roof is firm and not susceptible to sloughing. When used with wood or metal, bearing plates at least 4 inches square or the equivalent are required. Experience indicates that 6-inch square bearing plates are necessary to provide sufficient load bearing surface in areas where the roof is susceptible to sloughing. The exception allowing the use of 5-inch square bearing plates has been added to the final rule in response to commenters who stated that such bearing plates are being successfully used throughout the industry where roof conditions permit. Bearing plates 4-inch square have proved to be effective when used in conjunction with wood or metal materials which assist in distribution of the load on roof bolts.

The final rule also specifies that when wooden materials are used between the bearing plate and the mine roof, and the areas to be supported have a life expectancy of 3 years or more, the wood must be treated to minimize

deterioration. This provision, which is derived from an existing criterion, has been included in the final rule as a mandatory provision. Commenters pointed out that untreated wooden materials used in long term use entries can deteriorate and cause a loss of roof support.

Paragraph (d) requires that washers, when used, conform to the shape of the roof bolt head and bearing plate. When washers do not conform to the shape of the roof bolt head and the bearing plate, the proper torque-tension relationship cannot be consistently obtained.

One commenter suggested that washers should be required to be used with all roof bolts. MSHA's experience indicates that washers are not necessary in all cases. For example, washers would not improve the performance of most grouted roof bolts nor the performance of bolts used with a bearing plate having a hole of one inch diameter or less.

Paragraph (e) requires the diameter of finishing bits to be within a tolerance of plus or minus 0.030 inch of the manufacturer's recommended hole diameter for the anchor used. This final rule adds a minus margin to the existing tolerance permitted for these bits, and makes the existing criterion a mandatory standard. Studies have shown that roof bolt anchorage is sound within these tolerances.

Some commenters stated that the lower tolerance for roof bolt hole diameters need not be addressed by these standards. However, an undersized hole can prevent proper setting of an expansion shell. In addition, the pressure generated by roof bolting machines can force a roof bolt into an undersized hole, leading to possible damage of the anchor.

Several commenters suggested that the standard for roof bolt hole diameter tolerance not be applicable to resin-grouted bolting systems. These commenters indicated that tolerances are critical for mechanically anchored systems but not resin-grouted bolting systems. Although not as essential, hole diameter tolerances are important for resin-grouted bolts. For example, too large a hole can result in an insufficient amount of grouting material around the bolt and, consequently, an inadequate bond. Too small a hole would have the same result since there would be inadequate space for the grouting material.

In response to commenters, the final rule uses the phrase "manufacturer's recommended hole diameter" to clarify the phrase "required hole diameter" which was used in the proposal.

This section also requires that finishing bits be distinguishable from other roof drill bits when separate finishing bits are used. Existing criterion in § 75.200-7(b)(1) provides that finishing bits should be "easily identifiable by sight or feel." The final rule, however, emphasizes the performance objective of the standard rather than requiring a specific type of design for compliance.

Paragraph (f)(1) requires tensioned roof bolts to be at least 30 inches long when they are used to provide support by creating a beam of laminated strata. The final rule reflects experience which indicates that for a beam of laminated strata to be effective for roof support, the beam needs to be at least 30 inches thick. This standard also requires roof bolts that provide support by suspending the roof from overlying stronger strata to anchor at least 12 inches into the stronger strata.

One commenter suggested that all roof bolts be required to be at least 36 inches long. While roof bolts at least 36 inches long may be necessary in some cases, proper beam thickness and secure anchorage to overlying strata can be achieved with roof bolts that are less than 36 inches. Bolt lengths for each mine will be established in the roof control plan.

Paragraph (f)(2) specifies requirements for testing overlying roof strata when tensioned roof bolts are installed. The requirement for test holes to be drilled above the anchorage horizon provides a means of identifying changes in the overlying strata that may affect roof bolt anchorage. In response to commenters, and to clarify the Agency's intention, this section has been changed from the proposal to clearly indicate that this requirement for test holes applies only to mechanically-anchored tensioned bolts and that roof bolts may be installed in the test holes. Mechanically anchored bolts have an expansion shell at or near the bolt top which, when the bolt is turned, expands to anchor into surrounding strata, permitting the bolt to be tightened and thus binding the roof strata together. If the strata around the shell is soft, the support effects are lost. However, with resin-type bolts the length of the bolt is bound to the various layers of roof strata by the resin mix. Thus, the competency of the strata at the top of the bolt is less important.

The proposal would have required a test hole to be drilled in each bolting cycle. However, the depth of a cycle varies with the mining system. For example, the roof bolting cycle for conventional mining systems normally progresses for about 10 feet while

mining systems using continuous mining machines with integral roof bolters may have bolting cycles which progress for 100 feet or more. To be responsive to these variations, the interval between test holes is required by the final rule to be addressed in each mine's roof control plan. Consistent with this approach, a provision has been added to the roof control plan information provisions which requires specification of the interval between test holes.

Some commenters suggested that test holes be conspicuously marked to assure that they have been drilled. The purpose of drilling test holes is to determine the competency of the strata. Once this has been accomplished, no additional safety benefit is gained from marking these holes.

Paragraph (f)(3) specifies performance standards for the installed torque or tension range of tensioned bolts. This standard requires that, as specified in the roof control plan, the installed torque or tension range for bolts must maintain the integrity of the support system and not exceed the yield point of the bolt or the anchorage capacity of the strata. The effectiveness of tensioned roof bolting systems is dependent upon maintaining the tension on the bolts within the proper range.

Paragraphs (f)(3) and (4) use the terms "torque" and "tension" when referring to installation ranges and integrity measurements. The addition of the word "tension" permits the use of tension-indicating devices instead of torquing devices to evaluate the integrity of the installation. This change also allows for the use of devices resulting from technological advancements in measuring the integrity of roof bolt installations.

Paragraph (f)(4) provides procedures for measuring the actual torque or tension on tensioned bolts installed during each roof bolting cycle. This standard requires that the first roof bolt installed and one out of every four bolts installed thereafter be measured immediately after installation. The final rule also clarifies that these intervals are independently applicable to each boom on a roof bolting machine. This provision addresses the need to assure that, for each drilled head in use, roof bolts are installed with proper torque or tension. The two primary causes of failure to achieve proper torque or tension on tensioned roof bolts are changes in overlying strata and improperly adjusted roof bolting machines. Taking measurements on these bolts and drilling test holes during each roof bolting cycle provides the sampling necessary to detect changes in

geological conditions or in adjustments to roof bolting machines.

When the specified torque or tension range for tensioned roof bolts is not achieved, corrective action is required by the final rule. This revises the existing criterion which provides for "supplemental support" to be installed when the specified torque range is not achieved, recognizing that, for example, repairs or adjustments to roof bolting equipment may also be the action necessary to correct the problem. Corrective action includes adjustment or replacement of bolts with improper torque or tension, changes or adjustments to the roof bolting equipment, using different length bolts or using other roof support systems.

The final rule deletes the existing criterion calling for particular types of torque wrenches to be used for the measurement of roof bolt torque, and retains the proposed requirement that the actual torque or tension on tensioned roof bolts be measured. This results in a more performance-oriented standard and allows for the introduction of new technology in this area.

Consistent with this approach, the final rule also deletes the existing criterion which provides that a torque wrench should be on each roof bolting machine. Several commenters suggested that torque wrenches be required to measure torque, and that they be supplied on each roof bolting machine so that they are readily available. The concern of these commenters was that the right tool be available for testing the torque of roof bolts. As noted above, MSHA believes that the final rule should not inhibit the use of any effective method for evaluating roof bolt torque or tension, which may be something other than a torque wrench. For example, the Agency is aware that devices now exist which can be installed with tensioned roof bolts and provide a constant read-out of the tension on the bolts. Thus, instead of specifying a tool for evaluating the torque or tension on bolts, the final rule requires torque or tension to be measured, permitting the mine operator to determine the most effective method, the type of equipment to be used, and the storage location.

One commenter suggested that a provision be added which would require damaged or dislodged roof bolts to be replaced before any work or travel is permitted in the affected area. When roof bolts are damaged or dislodged, the surrounding roof is no longer supported. Thus, the concern of this commenter is addressed by § 75.202(b), which prohibits persons from traveling in unsupported areas. In addition,

§ 75.211(c) requires that hazardous conditions be corrected, or that each entrance to such area be posted with a warning or a physical barrier installed.

The final rule also deletes the existing criterion which provides that a "qualified person designated by the operator" should perform roof bolt torque measurements. Under MSHA standard 30 CFR 48.7, miners who are assigned to new tasks are required to be instructed in the safety and health aspects of the job, including safe work procedures.

Paragraph (f)(5) requires the actual torque or tension on mechanically anchored tensioned roof bolts to be periodically measured in advancing sections from the outby corner of the last open crosscut to the face. These measurements are required to be made at least once during each 24-hour period in which coal is mined in these places. For example, if coal is mined in only 2 of 6 working places on a section during a 24-hour period, these measurements would be required only in the places where coal is mined. The standard also requires "corrective action" to be taken when the majority of bolts tested are not within the specified torque or tension range. Corrective action would include installing supplemental supports such as additional roof bolts, crossbars, cribs or posts, or prohibiting persons from working or traveling in the affected area.

Several commenters suggested deletion of this requirement, stating that since the distribution of mine stresses change continually without adversely affecting the support system, subsequent torque or tension measurements are not necessary. MSHA agrees that changes in the distribution of mine stresses continually occur, particularly beyond the last open crosscut where mining is being conducted. While these changes do not always adversely affect the roof bolting system, such changes can result in excessive loading of the bolts. In addition, the strata at the anchorage horizon of the bolts could be weak, which can cause the bolts to lose torque or tension. Subsequent torque or tension measurements provide a means for determining if roof bolts are maintaining adequate torque or tension and whether changes in the distribution of mine stresses have adversely affected the support systems.

The final rule replaces the recordkeeping provision in the existing criterion with a requirement that the operator or a person designated by the operator certify by signature and date that subsequent torque or tension measurements have been made. These certifications should be made within a

reasonable time after the measurements have been completed. As proposed, certifications must be maintained for one year and must be made available to the representatives of the miners as well as authorized representatives of the Secretary.

One commenter was concerned that persons employed by the mine operator could not certify that the subsequent measurements have been made since the proposed provision only mentioned the mine operator. In response to this commenter and to clarify MSHA's intention, the final rule specifies that the mine operator or a person designated by the operator must make the certifications required by this section.

Paragraph (f)(7) prohibits tensioned roof bolts, installed as roof support, from being used to anchor trailing cables or for any other purpose that will place a sudden load on the bolts. Under these conditions, roof bolts can lose support capacity through vibration and other stress effects.

In response to commenters, and to clarify this standard, the preamble language used in the proposed rule to identify the types of devices that could be installed on roof bolts without affecting the torque or tension have been included in the final rule. MSHA recognizes that hanging trailing cables, line brattice, telephone lines, or other similar devices, which do not place sudden loads on bolts, should not be prohibited by the final rule.

Paragraph (f)(8) requires angle compensating devices to be used with tensioned roof bolts when these bolts are installed at angles greater than 5 degrees from the perpendicular to the bearing plate. Without the use of a compensating device under these conditions, the roof bolt head is stressed and failure could occur.

The final rule is changed from the proposal, which referred to angle compensating devices being used with bolts that are installed at angles greater than 5 degrees from the "perpendicular to the roof line." Commenters pointed out that the relationship of the roof bolt to the bearing plate, and not the roof line is the relevant consideration. The final rule also deletes the specific types of angle compensating devices which are identified in the existing criterion. Instead, the final rule emphasizes the result required, specifying that the device compensate for the angle at which the bolt is installed.

Paragraph (g) establishes requirements for testing the integrity of installed non-tensioned grouted roof bolts, specifying that a test be conducted on the first bolt in each

bolting cycle to determine if the installed bolt can withstand 150 foot-pounds of torque. The final rule permits this to be done immediately after the first row of bolts is installed or, as suggested by commenters, during installation of the first row. The standard also requires that corrective action be taken if the grouting material of these bolts has not created a sufficient bond to withstand the specified torque. Corrective action would include making adjustments to the quantity or quality of grouting material being used, assuring that the method of installation is proper, or use of a different type of support system.

The existing criterion for spot roof bolting is deleted by the final rule because § 75.204 of the final rule addresses all roof bolting applications, including spot bolting.

Section 75.205 Installation of roof support using mining machines with integral roof bolter.

This standard, which is derived from existing § 75.200-12(b), establishes requirements for the installation and spacing of roof supports when using mining machines with integral roof bolters. It requires that crossbars or planks be used when roof bolts are installed more than 8 feet apart, and prohibits the installation of bolts greater than 10 feet apart. These distances are unchanged from the proposal and in MSHA's experience, have been effective in supporting the roof in areas where continuous mining machines with integral bolters are used. If the particular conditions at a mine are such that installing roof bolts on the spacings specified in this section of the final rule would be inadequate to maintain roof control, the District Manager is authorized through the plan approval process to require that roof bolts be installed closer together.

Provisions in this section of the proposal which addressed natural roof support (arched roof) have been deleted. As stated in the proposal, this method of roof control has been discontinued in the mining industry.

Section 75.206 Conventional roof support.

The standards in this section are derived from existing criteria in § 75.200-8, except paragraphs (c) and (d) which are new. The standards address the use of conventional roof support, which includes the use of support materials such as wood or metal posts, beams, crossbars and planks.

Several commenters recommended that conventional roof support be prohibited as the sole means of roof

support and that "full roof bolting" be required in all mines. These commenters suggested that conventional support should be permitted only as additional support in conjunction with roof bolting systems. They maintained that conventional roof support methods are outdated, can be unsafe, and that technology is available to provide full roof bolt support in all mines. These commenters also referred to accidents which they linked to the use of conventional support systems. In contrast, other commenters stated that conventional supports can be used safely and that a requirement for roof bolting as the primary means of support in all mines would eliminate some mining methods which have been used safely.

The final rule permits the use of conventional support and establishes safety standards which apply when conventional supports are used as the sole means of support. Under certain mining conditions, conventional support systems, when properly used, are safe and effective. Also, due to the various compositions of roof strata encountered in underground coal mines, no single support system is appropriate for all mines. For example, where the strata affords little anchorage capacity or where the support of massive strata is not effected by the tensile properties of roof bolts, roof bolting may be neither practical nor functional. Under these circumstances, conventional roof support systems provide a safe alternative.

However, as stated in the proposal, the use of conventional roof support as the only means of support should have limited application in the coal mining industry today. Roof bolting systems which provide full overhead support and allow the use of large and more productive mining equipment are being used safely in mines with a wide variety of roof conditions.

Paragraph (a) of the final rule contains standards for the use of conventional supports as the sole means of support. These standards, derived from existing criteria, set minimum requirements for the width of entries and roadways, as well as the spacing of supports. Under the final rule, the width of all openings must be limited to 20 feet and the spacing of roadway supports is not permitted to exceed 5 feet. Where full overhead support is used, such as beams or crossbars, straight roadways can be no wider than 16 feet, and must be limited to 14 feet wide where supports such as posts or jacks are used. Curved roadways are not permitted to exceed 16 feet wide, regardless of the type of conventional support used. In the face

area, conventional supports must be set within 5 feet of the uncut face. This will provide openings and roadway widths that afford safety to miners by maintaining roof stability and also allow sufficient space to maneuver mining equipment so that the occurrence of supports being inadvertently knocked out is minimized. Paragraphs (a) (2), (3), (4) and (5) of this section were included in the proposal as criteria provisions. Upon further consideration MSHA has determined that these provisions are generally applicable at all mines that use conventional supports as the only means of roof support and should be included in the final rule as standards. However, if the particular conditions at a mine are such that maintaining the widths of openings and roadways and the spacing of supports consistent with paragraph (a) of this section would be inadequate to maintain roof control, the District Manager is authorized through the approval process to require the width of openings and roadways and the spacing of supports to be less than specified in this standard.

The requirement that width of openings be limited to 20 feet wide when using only conventional supports is derived from the existing criterion in § 75.200-8. The proposal would have deleted this, but retained the related existing criterion in § 75.200-9, which provides that any place driven over 20 feet wide should be supported by a combination of conventional supports and roof bolts.

When conventional supports are used as the sole means of support, a span of roof corresponding to the width of roadways is left with no overhead supports. When a combination of conventional supports and roof bolts is used, bolts are installed in the roof over the roadways, providing overhead support.

Wider openings inherently create greater stresses on the roof span, which can cause roof separation or shearing along the ribs, possibly leading to failure of the roof. When openings are maintained no wider than 20 feet, conventional supports can, in favorable conditions, provide adequate support.

For openings wider than 20 feet, however, MSHA has concluded that a combination of roof bolts and conventional supports is necessary for reliable roof control. A survey conducted by MSHA indicates that 71 working sections are currently mining openings more than 20 feet wide with conventional supports as the only means of roof support. To continue mining in this fashion, roof bolts must be used in conjunction with the conventional supports.

The requirement that supports be installed to within 5 feet of the uncut face will assure that supports are installed as close as practicable to the face before further roof is exposed by the mining process.

The final rule also retains the proposed provision that each opening along a travelway be supported by extending the line of supports across openings when they are no longer needed for storing supplies or for equipment to travel into the area. This minimizes the potential for a roof fall at the intersection of entries, rooms and crosscuts.

Paragraph (b) sets forth specifications for conventional roof support materials, which are retained from the proposal. Paragraph (b)(1) specifies the size requirements for posts, addressing the diameter of round posts and the cross-sectional area of split posts as a function of their length. For purposes of clarity, these requirements are set forth in a table. The final rule revises the specifications in existing criteria to make the support capacity for posts of varying lengths more equivalent, particularly those used in higher coal seams. For example, an existing criterion specifies that the diameter of posts be increased 1 inch for each 15 inches of length. However, with this approach, posts used in a 12-foot coal seam would be required to have a support capacity approximately six times that of posts used in a 5-foot seam. Therefore, the final rule specifies more equal support capacity for posts longer than 60 inches by requiring the diameter to be increased 1 inch for each 24 inches of length greater than 60 inches.

One commenter suggested that split posts be prohibited, except for use as breaker posts. This commenter indicated that split posts do not provide the same support as round posts. The strength of a support post is influenced by the integrity of the material, its cross-sectional area, and its length. Each of these factors is addressed in the final rule. The cross-sectional area requirements for split posts are derived from the cross-sectional area of round posts of the same length.

Paragraph (b)(2) sets out dimensions for wooden cap blocks, footings, crossbars and planks. This standard requires that each wooden cap block and footing have flat sides and be at least 2 inches thick, 4 inches wide and 12 inches long. The existing criteria section calling for cap blocks to have flat parallel sides is deleted by the final rule, recognizing that flat sides are the important feature of these materials to be effective for use as headers and footers. In addition, paragraph (e) of this

section requires that posts and jacks be tightly installed on solid footing.

One commenter suggested that cap blocks and footings be required to have a width which is at least equal to the diameter of the post being used in order to take better advantage of the load bearing capacity of each post. The final rule does not adopt this comment. Under the final rule, cap blocks and footings are required to be at least 4 inches wide, which is the smallest diameter of the post that may be used for support. However, when a minimum post diameter is ordered, various larger diameter posts are frequently provided, some of which may exceed the size of the cap blocks and footings to be used. This variation would make the suggested revision impractical. In addition, the rule provides for substantial bearing surface by requiring cap blocks and footers to be at least 12 inches long.

Under the final rule, crossbars are required to have a minimum cross-sectional area of 24 square inches and be at least 3 inches thick. Planks used for roof support must have a minimum width of six inches and be at least 1 inch thick. The existing criterion, which specifies that a plank should have a minimum cross-sectional area of 8 square inches, is revised by the final rule to a minimum width of 6 inches. A minimum width of 6 inches provides a bearing surface for planks which are normally used to control sloughing type roof conditions and recognizes that 2" x 4" lumber should not be used as a plank.

One commenter suggested that planks be at least 2 inches thick because they are normally used in roof fall areas in conjunction with crossbars to form a canopy to protect against roof and rib sloughing. Although planks may be used in conjunction with crossbars, MSHA's experience indicates that planks are more commonly used in conjunction with roof bolts to assist in the control of sloughing. Planks that are at least 1 inch thick have been successfully used for this purpose.

The final rule deletes the criterion in existing § 75.200-8(a)(5), which specifies that cribs be made with wood having parallel flat sides and that cribs be not less than 30 inches square. Paragraph (b)(3) of the final rule replaces this criterion with the requirement that cribbing materials have at least two parallel flat sides. Parallel flat sides are important to cribbing materials since these support structures are built by stacking these materials. No crib dimensions, however, are specified because this could prevent the use of cribbing materials in confined areas where they may have application.

One commenter suggested that crib materials need to be at least 6 inches thick and 6 inches wide to provide sufficient support. The final rule does not include this suggestion. Cribs are commonly used where roof control is difficult and inadequate materials would fail and need to be replaced. Under the existing standards, dimensions for crib blocks are chosen by the operator consistent with the conditions under which they will be used. MSHA has not experienced problems with this approach.

Paragraph (c) allows the use of two or more posts set in a cluster if their total strength meets that required by paragraph (b)(1) for a single post of the same length. This provision is intended to allow a number of posts to be used together, rather than requiring that wider posts be ordered when mining heights vary. In response to commenters and for clarity, the final rule includes minimum dimensions for posts used in a cluster. MSHA experience indicates that posts narrower than those permitted by the final rule are subject to buckling and that installing the number of such narrow posts necessary to provide equivalent strength would be impractical.

Paragraph (d) allows the use of materials other than wood for conventional roof support if these materials are at least as strong as wood. Cribbing materials and other supports made from non-wood materials which provide support capacity equal to wood are currently available. For example, concrete crib blocks and fiberglass beams have been successfully used as conventional support materials.

Paragraphs (e) through (g) specify requirements for the firm installation of posts, spacing of blocks used for lagging between the roof and crossbars, and jacks used for roof support.

Several commenters suggested that the final rule include a requirement that a maximum of two wedges be used with each post to produce a tight fit of posts between the mine bottom and roof. These commenters indicated that such a requirement would avoid stacking wedges over posts which are too short and provide for secure installations. MSHA agrees that excessive use of wedges can result in unstable posts. However, uneven roof conditions or other irregularities may require additional wedges to properly install a post. For this reason, the final rule does not specify a maximum number of wedges that can be used, but instead specifies that each post be tightly installed.

Paragraph (h) requires jacks set for roof support to be used with at least 36 square inches of roof bearing surface. Several commenters suggested that the bearing surface for jacks be reduced to 25 square inches in order to be consistent with the bearing surface for roof bolt bearing plates that are 5 inches square. MSHA believes that 36 square inches is appropriate because jacks are used and reused under varying conditions and can exert heavy loads against the roof due to mechanical leverage. Other commenters suggested that the bearing surface be slip resistant. When properly set, jacks exert pressure that is sufficient to maintain placement due to the friction between the mine bottom and roof and the bearing surfaces of the jack.

The final rule deletes existing § 75.202 which requires that dislodged supports be replaced promptly. Several commenters indicated that replacement of dislodged supports is not immediately necessary in all areas of a mine. Instead, replacement should depend on the area of the mine affected. MSHA agrees that an area not being used for work or travel need not be a high priority for replacement of support. The hazards associated with dislodged supports are addressed by § 75.202(b), which prohibits persons from traveling in unsupported areas, and § 75.211(c) which requires that hazardous conditions be corrected, or a warning posted or barrier installed to impede travel into the area.

Section 75.207 Pillar recovery.

This final rule is derived from existing § 75.201-2 and existing criteria in § 75.200-11. It establishes safety standards for the extraction of pillars during retreat mining.

In the proposal, MSHA included as standards, existing criteria that were considered applicable to all mines. Several commenters stated that while these provisions would be applicable most of the time, there are situations when they would not be appropriate. For example, remote control continuous-mining machines and mobile roof support systems may eliminate the need for installation of some breaker posts, which would reduce miner exposure to roof fall hazards while installing such supports. To provide flexibility and to address these situations, a provision has been added to the final rule that permits alternative methods to be addressed through the roof control plan process.

Paragraph (a) prohibits conducting full and partial pillar recovery on the same pillar line, except where physical conditions such as unstable floor or roof, falls of roof, oil and gas well

barriers or surface subsidence require that pillars be left in place. Full and partial pillar recovery on the same pillar line can create conditions which cause roof pressures to override into active working places. However, situations can occur during full pillar recovery which require some pillars or parts of pillars to be left intact for safety reasons. The final rule recognizes these circumstances, but prohibits a general practice of full and partial pillar recovery on the same pillar line.

Paragraph (b) requires that at least two rows of breaker posts or equivalent means of support be installed as close to the initial breakline as practicable and across each opening leading into an area where full or partial pillar extraction has been completed. Breaker posts are used to prevent a roof fall in a mined-out area from continuing into an area where miners work or travel.

Several commenters suggested that the proposed requirement for breaker posts across each opening leading to an area where pillar extraction has been completed be deleted because these areas would be addressed by the requirement that breaker posts be set as close to the intended breakline as practicable. MSHA's intention is that these provisions be applicable in two different situations. The first is that breaker posts be installed as close as practicable to the initial intended breakline after development of the section has been completed and before any recovery work has started. The second is that breaker posts be installed across each opening leading into an area where pillar recovery has been completed. The term "initial" has been added to the phrase "intended breakline" to clarify that this provision is applicable before any pillars have been extracted.

This standard also requires that a row of roadside-radius (turn) posts or equivalent support be installed leading into any split or lift of a pillar prior to the start of mining. Roadside-radius posts reduce the width of the roadway.

Several commenters suggested that mobile roof support (MRS) systems are available and should be used as breaker posts rather than requiring the miners to manually set the breaker posts. The MRS system is currently being developed by the Bureau of Mines, U.S. Department of the Interior. Preliminary results obtained from experiments conducted in mines where the seam heights were between 7 and 15 feet indicate that the MRS system may have positive application in higher coal seams. However, this project is still in the developmental stage, and research is still being conducted by the Bureau. For

these reasons, the final rule does not require the use of these devices at this time.

Paragraph (c) requires at least two rows of posts, or equivalent support, to be set on each side of the roadway on not more than 4-foot centers, and permits only one open roadway not more than 16 feet wide from the solid pillars to a final stump. A provision has been added to this section of the final rule which limits the roadway width to the final stump to 14 feet where posts are used as the only means of support. This provision is consistent with § 75.206(a)(4), which limits the width of roadways to 14 feet when posts are used. However, a 16-foot roadway could be used where cross bars or other means of overhead support are used in conjunction with posts. The "final stump," sometimes referred to as a "pushout," is the last portion of a pillar providing roof support. When it is removed, the possibility of a roof fall is greatly increased.

Paragraph (d) sets out requirements for open-end pillar extraction. Open-end pillar extraction is mining a pillar when no portion of the pillar is left between the mined-out area and the section of the pillar being mined. Under the final rule, the width of the roadway is not permitted to exceed 16 feet and at least two rows of breaker posts on 4-foot centers or equivalent support must be installed between the lift to be started and the area where pillars have been extracted. The breaker posts or equivalent support must be maintained to within 7 feet of the face. Where open-end pillar recovery is conducted, these are the only means of support between the mined-out area and the persons extracting the pillar.

Several commenters suggested that open-end pillar extraction be prohibited because this method is outdated and presents too great a hazard for miners. Open-end pillaring has been done safely and effectively in some mines where proper procedures are used. Therefore, the final rule continues to recognize this mining method.

As proposed, existing standard § 75.201-2(h), which addresses recovery of adjacent pillars left and right from the same opening, is deleted by the final rule. Under the final rule, this element of pillar mining would be addressed in each mine's roof control plan in which the operator is required to address the sequence of mining pillars.

Section 75.208 Warning devices.

This standard, which is new, requires that areas where permanent support ends be identified to minimize the risk

of miners unintentionally going into unsupported areas. In the mine environment, the location where permanent support ends is often difficult to detect. Therefore, under the final rule, the end of permanent support must be marked with a readily visible warning or, alternatively, a physical barrier installed to impede passage into areas where the roof is unsupported. A visible warning could include reflective devices hung, for example, on the last row of roof bolts or other permanent roof support. A barrier could be constructed of posts across the entry at the end of permanent roof support.

In response to commenters, the phrase "except during the installation of roof supports" has been added to the final rule to clarify that this standard is not applicable during the installation of roof supports. Persons installing supports would normally be aware of where the permanent supports have been installed and are working to advance the support system. The proposal that the end of permanent support be "conspicuously identified" has been changed to "posted with a readily visible warning" in the final rule to more clearly state MSHA's intention that the device be readily seen in the mine atmosphere.

A commenter suggested that this standard require a reflective marker and a physical barrier, stating that both methods are necessary to prevent miners from unintentionally entering unsupported areas. The commenter also pointed out that the cost of installing both methods would be minimal compared to the protection they would provide to miners. The purpose of this requirement is to provide a means of warning persons when they are approaching an area that is not supported so that they do not inadvertently travel into the unsupported area. The Agency believes that this can be accomplished by either a visible warning or a physical barrier. A requirement that all markers have a reflective surface could prohibit other effective methods that will provide the necessary warning.

Several commenters suggested that a provision be added to the final rule requiring devices to be installed that would monitor and signal movement of the mine roof. These commenters stated that roof movement indicators are currently available and that their regular use could save miners' lives. Roof movement indicators give a signal when the roof moves more than the amount to which the device is set to respond. The objective is to set the device to detect roof movement that indicates an

impending fall, as distinguished from normal roof movements.

The final rule does not require the use of roof movement indicators. As discussed in the proposal, MSHA has followed the development of these devices and believes that roof movement indicators can measure roof sag with reasonable accuracy. However, at their current stage of development, the Agency does not believe that these devices can reliably forecast the failure of mine roof. Roof conditions vary substantially from mine to mine, and in many cases, from section-to-section within the same mine. Some roof strata can sag considerably while remaining stable and supported. Other roof strata will sag only a fraction of an inch before falling.

The Bureau of Mines, U.S. Department of the Interior, has designed an experimental ultrasonic distance-measuring device that measures roof and floor convergence, as well as the convergence rate. Laboratory tests conducted on these devices under controlled conditions indicate that they can reliably measure differences in the distance between the mine floor and roof. However, when field tested at two underground mines, some instability in the readings were observed. Most of the errors were traced to heavy equipment vibrations, temperature variations, and changes in ventilation. This experience indicates that further research is needed to address these problems, as well as the problem of determining how much roof sag is indicative of a roof failure.

Section 75.209 Automated Temporary Roof Support (ATRS) systems.

This new provision requires the use of automated temporary roof support (ATRS) systems with roof bolting machines and continuous-mining machines equipped with integral bolters. The purpose of these safety devices is to protect persons from roof falls when installing roof bolts in working sections.

Under the final rule, ATRS systems are required to be used with all new roof bolting equipment ordered after March 28, 1988, regardless of the mining height in which the equipment will be operated. The standard also requires existing roof bolting machines and continuous-mining machines with integral roof bolters being operated in mining heights of 30 inches or more to be used with ATRS systems in accordance with a graduated compliance schedule. Roof bolting equipment being operated in working sections where the mining height is 36 inches or more must be provided with ATRS systems by March 28, 1989 and roof bolting equipment being operated in

mining heights below 36 inches to 30 inches must be provided with ATRS systems by March 28, 1990. After this date, the use of ATRS systems with existing roof bolting equipment in mining heights below 30 inches must be addressed in the roof control plan on a mine-to-mine basis.

Mining height will be measured from the mine floor to the mine roof, without regard to roof support materials. Measurements to establish mining height will be made only in areas where good mining practices have been followed.

As stated throughout this rulemaking, a primary objective of the final rule is to minimize hazards associated with persons working beyond permanently supported roof during the installation of supports. Roof falls are the leading cause of fatalities in underground coal mines. These accidents most frequently occur near the face area where coal is extracted and often involve activities related to the installation of roof supports.

The use of ATRS systems should significantly reduce the number of fatalities and injuries that occur when miners work or travel beyond permanently supported roof. However, ATRS systems will not produce optimum effectiveness unless training programs continue to emphasize the importance of remaining under supported roof at all times. MSHA accident records show that in 1985 and 1986 five fatalities occurred when miners advanced beyond the ATRS into areas where the roof was unsupported. As the use of ATRS systems grows, it is essential that miners be properly trained in accordance with the provisions of 30 CFR Part 48, to work or travel only within the areas being protected by ATRS systems.

Through the combined efforts of the mining community, a variety of ATRS systems has been developed for use in underground coal mines over the past decade. As a result, a large number of these devices are in use today. MSHA estimates that nearly 74 percent of roof bolting machines, which includes almost all continuous miners with integral roof bolters, are currently equipped with an ATRS system.

ATRS systems typically are mounted on roof bolting machines and continuous-mining machines with integral roof bolting equipment. Some ATRS system designs, however, are free-standing machines. Either type can be used to comply with the final rule, which requires ATRS systems to be used with machines that perform roof bolting operations.

ATRS systems are usually composed of one or more hydraulically-actuated cylinders with a bar, ring, or other support device that can be lifted and pressed against the mine roof. ATRS system controls are typically located so that they can be operated from under permanently supported roof. However, some existing designs require the equipment operator to be temporarily positioned a short distance beyond the last row of permanent supports to set the ATRS. Because of this, these designs include structures to protect the equipment operator.

At the present time three States, West Virginia, Virginia and Kentucky, have requirements for the use of ATRS systems. MSHA's final rule differs from the Virginia and Kentucky requirements, which call for ATRS systems on all roof bolting machines and continuous-mining machines with integral roof bolters operated in mining heights of 42 inches or more. The final rule also differs from the West Virginia standard, which requires ATRS systems on roof bolting equipment in all mining heights, unless a waiver of compliance is granted. MSHA's final rule addresses the use of ATRS systems in mining heights below 30 inches on a mine-by-mine basis.

The proposal provided that ATRS systems be used to the extent practicable and as technology became available to protect persons working or traveling beyond permanent roof support. Some commenters objected to this approach, stating that it was too general and that the standard should more clearly specify operators' compliance responsibilities. These commenters recommended that requirements for ATRS systems only apply during the installation of roof bolts. In support of this, they stated that currently available ATRS systems have been designed for use during the installation of roof bolts and have not generally been used during the installation of conventional support.

MSHA recognizes that ATRS systems have been designed predominantly for use in roof bolting operations. In part, this is because ATRS systems were developed as alternatives to canopies or cabs on roof bolting equipment. Under 30 CFR 75.1710, substantially constructed canopies or cabs are required on all self-propelled electric face equipment to protect the operators of these machines from roof falls. Because of the mechanical articulation necessary in roof bolting operations, and the close proximity of the equipment operator to this part of the machine, devices which provide equal or greater protection to canopies or cabs were

developed and approved under 30 CFR 75.1710-1(f).¹

After reviewing existing applications for ATRS systems, the Agency has concluded that the adaptability of ATRS systems for use during the installation of conventional supports has not been established at this time. Therefore, the final rule specifies the use of ATRS systems in conjunction with roof bolting operations, and provides a compliance schedule for the introduction of ATRS system technology in progressively lower mining heights. MSHA will continue, however, to encourage the development of ATRS systems for use during the installation of conventional supports and during installation of supports for purposes such as extending line curtain and taking gas checks.

Commenters expressed divergent views about the use of ATRS systems in various mining heights. Some suggested that ATRS systems should be required in all mines, regardless of mining height. These commenters stated that ATRS systems have been successfully used in mining heights of 30 inches and that ATRS systems have been designed to work in mining heights as low as 26 inches. Other commenters recommended that ATRS systems should be required only where the mining height is 42 inches or more. These commenters pointed to problems with the use of ATRS systems in lower mining heights involving clearance, obstruction of the equipment operator's vision, and difficulty with retrofitting existing machines.

Adapting ATRS system technology to use in coal mines is primarily influenced by the design of the equipment with which the ATRS system is to be used, and the mining height the equipment is to be used in. For machine-mounted ATRS systems, these two related factors are most readily addressed in the manufacturing stage. As roof bolting machines and continuous-mining machines with integral bolters are built, the ATRS system can be made part of the machine, with consideration given to weight distribution, operator visibility and other design elements. The success of this approach is illustrated by the roof bolting machines and continuous-mining machines with integral bolters built over approximately the past 11 years, the vast majority of which have been designed to accommodate ATRS systems. Based on these considerations, all new roof bolting equipment and continuous-mining machines with

integral roof bolters ordered after the effective date of the final rule are required to be used with ATRS systems.

Existing roof bolting equipment and continuous-mining machines with integral bolters will also be required to be used with ATRS systems. The standard's two year phase-in schedule for this equipment recognizes the expanding application of ATRS system technology. For practical reasons, and because ATRS systems were developed as alternatives to canopies or cabs on mining equipment, retrofitting ATRS systems to existing machines began in mines with mine floor to mine roof measurements of 42 inches or more.² As applications of ATRS technology improved and the benefits of this safety equipment became known, ATRS systems have been consistently developed for a greater variety of machines and for use in lower mining heights.

A recent MSHA survey shows that out of approximately 2,976 roof bolting machines and continuous-mining machines with integral roof bolters in service, about 2,191 are equipped with ATRS systems. Of these, an estimated 380 are machines that were retrofitted with ATRS systems. The majority of this equipment operates in mining heights of 36 inches or more. Currently, 43 machines which were retrofitted with ATRS systems are operating in mining heights between 30 and 36 inches, and 4 in mining heights below 30 inches.

As these data indicate, today's ATRS systems technology is being applied to equipment in lower mining heights. From this trend and Agency experience with ATRS systems, MSHA has concluded that current ATRS system technology can be applied to roof bolting machines and continuous-mining machines now operating in mining heights of 30 inches or more. At mining heights below 30 inches, experience with applying ATRS system technology to existing equipment is still limited.

Several commenters stated that the the proposed 2-year compliance schedule for the use of ATRS systems was too long and that ATRS systems standards should be effective no later than six months after the effective date of the final rule. Other commenters recommended that ATRS systems requirements be effective 3 years after the final rule. They indicated that a 3-year period was necessary to allow

¹ Section 75.1710-1(f) provides for MSHA approval of devices to be used in lieu of canopies or cabs on self-propelled electric face equipment to protect equipment operators from roof falls.

² Under 30 CFR 75.1710-1, cabs or canopies have been required since January 1, 1976 on self-propelled electric face equipment operating where the mine floor to mine roof measurement is 42 inches or more.

mine operators to acquire ATRS systems and achieve compliance.

MSHA has informally reviewed the availability of ATRS systems and found that currently there are eight major manufacturers of roof bolting equipment that make ATRS systems. Primarily, these manufacturers make ATRS systems for the equipment that they manufacture, including ATRS system retrofitting kits for their equipment. In addition, there are eight independent shops of which MSHA is aware that make ATRS systems for application with a variety of roof bolting equipment. Some coal mining companies also make their own ATRS systems. From the recent MSHA survey noted above, the Agency also estimates that there are 495 roof bolting machines and continuous-mining machines with integral bolters operating in mining heights of 36 inches or more than are not yet being used with ATRS systems. In mines with mining heights of 30 inches up to 36 inches, approximately 173 pieces of roof bolting equipment are operating without ATRS systems.

Based on this information, MSHA has concluded that a one-year compliance schedule following the effective date of the final rule provides a reasonable opportunity for operators of coal mines with mining heights of 36 inches or more to acquire ATRS systems and implement the use of these devices with all roof bolting machines and continuous-mining machines with integral bolters. Recognizing that ATRS system technology has been applied to a lesser degree in the class of roof bolting equipments used in mining heights of 30 to 36 inches, an additional 12-month period is permitted for operators of these mines to achieve compliance with the ATRS system standard. This should also ease the initial demand for ATRS systems.

In addition, MSHA anticipates that ATRS system technology will continue to be adapted for use with existing roof bolting equipment in mining heights below 30 inches. To provide for the introduction of these ATRS systems in mines where they can be practicably used, the final rule requires operators of mines with mining heights below 30 inches to address the use of ATRS systems with existing equipment in the mine roof a control plan. This aspect of the ATRS system standards will apply two years after the effective date of the final rule. Where ATRS systems can be adapted for use with existing equipment in these low mining heights, revisions to the mine's roof control plan will be required to specify the use of ATRS systems. In making decisions about

whether ATRS system technology can be practicably implemented in low mining heights the district manager will take into consideration factors such as mining conditions and difficulties associated with retrofitting, including machine mobility and visibility.

Some exceptions to the use of ATRS systems are included in the final rule. In addition to conventional support mines, ATRS systems are not required by the final rule in anthracite mines because this method of mining coal is incompatible with ATRS systems. In anthracite mines, the coal is generally mined from pitching coal seams where roof is supported primarily by conventional methods and the use of roof bolting machines is impractical.

In mines that are required to have an ATRS system, the standard also authorizes District Managers to approve the use of alternative methods of temporary roof support as part of the mine's roof control plan. Commenters pointed out that it is necessary to allow alternatives to the use of an ATRS system when use of the device is unworkable. For example, in an area where a roof fall has occurred, the mine roof may be above the height capacity of the ATRS system being used at the mine, even if extension devices are used. The final rule would permit alternative support measures to be included in the mine's approved roof control plan to address such situations.

The final rule also permits the use of temporary supports in conjunction with an ATRS system. This provision recognizes that manually set temporary supports may be necessary to reduce the span of the unsupported roof in some circumstances. For example, when supporting a side cut it may not be practicable to set the ATRS system within 5 feet of the rib. Here again, the final rule permits circumstances such as this to be addressed in the mine's approved roof control plan.

Some commenters asked whether ATRS systems provided in accordance with this section would automatically be considered an approved alternative to a canopy or cab. As stated in the proposal, MSHA will continue to evaluate the use of ATRS systems as alternatives to canopies or cabs in accordance with 30 CFR 75.1710-1(f). ATRS systems conforming with the final rule will not be automatically approved as alternatives to the use of canopies or cabs.

The final rule prescribes where miners can safely work or travel to the left, right or beyond the support device of an ATRS system. It prohibits work or travel to the left, right or beyond the ATRS

system unless support is provided within 5 feet of the support device of the ATRS system. This requirement is derived from Agency experience with the area of support provided by other types of temporary and permanent support, and experience with ATRS systems. If the particular conditions at a mine are such that a 5-foot distance between supports would be inadequate to maintain safety for the miners, the District Manager is authorized through the approval process to require the distance between supports to be less than 5 feet.

This aspect of the final rule is unchanged from the proposal, except that separate standards for work or travel to the left or right of an ATRS system, and work or travel beyond the support device are consolidated into one standard. The phrase in the proposal which stated that the coal rib is considered support is not included in the final rule, since it is commonly understood in the industry that the coal ribs and face provide roof support.

The distance an ATRS system can be set beyond the last row of support is required by the final rule to be addressed in the roof control plan for each mine. Some commenters suggested the final rule specify that the distance between the ATRS system and the last row of installed roof bolts not exceed the bolt spacing specified in the mine roof control plan, plus 12 inches. They stated that an additional distance of 12 inches would accommodate the installation of bolts in the next row of the roof bolting pattern without any mechanical interference with the support device of the ATRS system. The distance an ATRS system is to be set beyond permanent support should be the minimum that is necessary to install the next row of supports. This distance will vary due to such factors as the lengthwise spacing of the supports, the roof conditions at the mine, and mechanical interference of the ATRS system with equipment used to install the roof bolts in accordance with the bolting pattern. MSHA believes that these factors can be more appropriately addressed in the roof control plan on a mine-by-mine basis, rather than by a general standard.

The final rule sets out performance features for ATRS systems which are broad enough to accommodate a wide range of technologies. ATRS systems are required to be capable of elastically supporting a deadweight load that is 450 times each square foot of roof area intended to be supported, but in no case less than 11,250 pounds. This minimum strength specification is currently used

to evaluate ATRS systems that are proposed to be used instead of a canopy or cab under 30 CFR 75.1710. It is derived from data gathered from fatal roof fall accident reports, which indicate that a majority of roof fall fatalities involve rock and other material approximately 3 feet thick or less. Taking this into account, the final rule requires that an ATRS system be capable of supporting a volume of rock 3 feet thick over the roof area intended to be supported by the ATRS system. Rock weighs approximately 150 pounds per cubic foot, and a column of rock 1-foot square and 3 feet thick weighs approximately 450 pounds. Applying these factors to an ATRS system designed to support, for example, a 5x5-foot area of roof, the ATRS system is required to elastically support a static load of at least 11,250 pounds (5' x 5' x 3' x 150-lb/cu ft).

The standard requires the controls that position and set the supports of an ATRS system to be operable from under permanently supported roof when positioning and setting the ATRS system. A vast majority of existing ATRS systems are designed this way. Alternatively, the controls can be operable from a position beyond permanent support, so long as they are located in a compartment that provides protection for the equipment operator. This alternative permits the continued use of certain existing ATRS systems that provide overhead and lateral protection for the equipment operator while at the ATRS system controls. Although this latter type of ATRS system briefly exposes the equipment operator to unsupported roof, the Agency has taken into consideration the safety advantages of this type of design which includes protection from rib or face rolls and roof falls that may override into the permanently supported area. In some cases, this design also permits total operation of the equipment while the operator remains in a protected compartment, affording continuous protection from roof falls and other hazards.

In response to commenters and to clarify MSHA's intention, the phrase "equipment operator's entire body be protected," which was included in the proposal, has been changed to the phrase "overhead and lateral protection." These commenters stated that it would be impossible to protect the equipment operator's entire body since arms or legs could be extended beyond the protection of the compartment. MSHA agrees. The purpose of this requirement is to provide overhead and lateral protection that will

allow the equipment operator to remain within the confines of the compartment while operating the controls.

The final rule sets a basic strength requirement for the compartment that protects the operator while at the ATRS system controls. The proposal, which would have required a 20,000-pound support capacity, is changed by the final rule to require that the operator's compartment be capable of elastically supporting a deadweight load of 18,000 pounds. This strength factor has proven to be effective for protecting persons under canopies from significant impact loads during actual roof falls.

Under the final rule, all jacks affecting the capacity of an ATRS system or a compartment must have check valves, or equivalent protection, to prevent support failure in the event of a sudden loss of pressure. This provision is changed from the proposal which referred to loss of pressure in hydraulic jacks. While current ATRS systems primarily use hydraulically operated jacks, other systems such as those pneumatically or mechanically actuated could be used, presenting the same hazard of support failure.

The final rule specifies that, except for the main tram controls, the controls which position and set the ATRS system must limit the speed of the equipment to 80 feet-per-minute. This provision addresses the potential hazards associated with tramming ATRS systems too quickly or abruptly into position, which may result in injury to the equipment operator or cause the equipment operator to be exposed to unsupported roof. This aspect of the final rule was developed based on underground observations and discussions with representatives of the mining community and equipment manufacturers regarding specifications for use of ATRS systems in lieu of canopies or cabs. A tramming speed of 80 feet-per-minute is slow enough to allow the equipment to be maneuvered safely while positioning and setting the ATRS system and yet fast enough to facilitate the bolting or other support operation. Virtually all existing ATRS systems incorporate this basic feature.

The final rule retains the proposed requirement that the support capacity of an ATRS system be certified by a registered engineer. Also under the final rule, a compartment provided in accordance with paragraph (e)(2)(ii) is required to be certified by a registered engineer as meeting the required minimum structural capacity. A certification from the manufacturer's registered engineer would constitute one method of compliance with this

requirement. These certifications are required to be made available to an authorized representative of the Secretary and representatives of the miners upon request. This provision has been added to the final rule to clarify MSHA's intention with respect to the availability of these certifications.

A common practice for evaluating the support capability of a structure is to consult a registered engineer. The final rule incorporates this practice with respect to the capacity of ATRS systems and compartments. The engineer's certification provides assurance and evidence that each system and related compartment meets the required structural specifications.

Section 75.210 Manual installation of temporary supports.

MSHA recognizes that the manual installation of temporary supports will continue to have application due to the variety of mining methods and mining conditions. The final rule, therefore, includes requirements for this method of roof control. These standards are derived from § 75.200 and criteria § 75.200-13.

The final rule permits only those persons installing temporary supports to proceed beyond the last permanent support until the supports have been installed. In addition, the final rule sets out requirements for the spacing and sequence of installing temporary supports and addresses work or travel in areas that are temporarily supported.

The procedures and precautions required for the manual installation of temporary roof support are based on industry experience and are designed to minimize the exposure of persons to unsupported roof. The final rule requires that persons manually installing temporary roof support position themselves between the temporary support to be set and two other sources of roof support. These other sources of support could be permanent supports, temporary supports already installed, or the coal face or rib. From this position, persons setting temporary support would be permitted to proceed up to five feet beyond supported roof to install the next support.

Several commenters suggested that temporary supports be installed at arms length. Except when adverse roof conditions are present, MSHA's experience indicates that 5 feet of space between temporary supports is generally adequate for controlling the roof and that this spacing is compatible with the subsequent installation of permanent roof support. The temporary roof support pattern should allow sufficient

room for maneuvering roof support installation equipment without dislodging temporary supports. The support pattern should also permit the installation of permanent supports without necessitating the removal or relocation of temporary supports, which can be dangerous. For these reasons, the final rule retains the proposed requirement that temporary supports, when manually installed, be set on no more than 5-foot centers. However, if the particular conditions at a mine are such that setting temporary supports on 5-foot centers would be inadequate to maintain roof control, the District Manager is authorized through the approval process to require the supports to be set closer together.

Section 75.211 Roof testing and scaling.

This final rule is derived from §§ 75.202, 75.205 and criteria in § 75.200-13 regarding examination and testing of the roof, face and ribs. It sets out requirements for making a visual examination for hazards, and conducting sound and vibration tests of the roof. The standard also requires precautions to be taken when hazardous conditions are detected.

Paragraph (a) of the standard requires a visual examination in any area where work is to be started and thereafter as conditions warrant. Changes in geological and atmospheric conditions can cause instability and deterioration of the roof, face and ribs in underground mines. These examinations and tests are necessary to identify hazards that may result from such changes before persons work or travel in the affected areas.

Paragraph (b) requires that sound and vibration tests or equivalent tests be conducted in areas where roof supports are to be installed, if the mining height permits and the visual examination has not disclosed a hazardous condition. The final rule differs from the proposal in that it permits tests other than sound and vibration tests to be conducted provided that these tests are as effective as sound and vibration tests. This change recognizes that new techniques for testing the roof may be developed.

When sound and vibration tests are made, they must be made after the ATRS system has been set against the mine roof and before other supports are installed. If an ATRS system is not yet in use at the mine, these tests must be made before each support is manually installed.

The mining height exception in the standard recognizes that in high coal seams sound and vibration tests may be impractical. Under the final rule, sound

and vibration tests are not required in these circumstances.

Several commenters suggested that sound and vibration tests not be required at all, stating that these tests involve additional exposure of miners to unsupported roof with no corresponding safety benefit. Sound and vibration tests are the primary method used in underground coal mines for identifying hazardous roof conditions, such as unstable or fractured strata just above the roof surface, which cannot be detected visually. MSHA believes roof testing enhances safety of the miners by providing more information for evaluating the condition of the roof. Failure to properly examine or evaluate roof, face, and rib conditions has been the cause or contributing factor in numerous roof fall fatalities that occurred in underground coal mines.

Paragraph (c) requires hazardous roof, face, and rib conditions to be corrected before there is any other work or travel in the affected area. If the affected area is left unattended, the standard requires each entrance to the area to be posted with a readily visible warning. Alternatively, the final rule requires a physical barrier to be installed to impede travel into the area. These precautions will alert persons entering the area of the dangerous condition.

The final rule revises the existing standard that requires "loose roof and overhanging or loose faces and ribs" to be taken down or supported. The final rule specifies that when a "hazardous roof, face and rib condition" is detected, the condition must be corrected. This change recognizes that all overhangs may not be hazardous. The proposed requirement that corrective action be taken "immediately" under these circumstances has been changed in the final rule to require corrective action "before any other work or travel in the area." Corrective action would include taking down or supporting the material posing the hazard. These changes are intended to simplify the final rule, while maintaining the purpose of the standard, which is that miners not be exposed to hazardous roof, face, and rib conditions.

As proposed, paragraph (d) requires a bar for taking down loose material to be provided in the working place or on all face equipment except haulage equipment. This bar is required to be of a length and design that would permit the removal of loose material so that the person using the bar is not exposed to the falling material when it is removed. Appropriate tools need to be readily available to perform safe removal of loose material.

Commenters suggested that a provision be added to this standard

which would require that loose materials be manually taken down only if the miner works from a location that is permanently supported or is supported by an ATRS system. This recommendation was not included in the final rule because loose materials can also be safely removed from areas that are supported by posts or jacks that are manually installed. Therefore, paragraph (d) of this section specifies that the bar used for taking down loose material be of a length and design that allows the removal of loose material from a position that does not expose the person performing this work to injury from falling material.

Section 75.212 Rehabilitation of areas with unsupported roof.

These standards are new and set forth the requirements for rehabilitating areas with unsupported roof created by mining machines, a fall or blasting. Rehabilitating unsupported areas has proven to be especially hazardous to miners. The roof is often broken, loose and difficult to control.

Paragraph (a) requires that, on a site-by-site basis, the mine operator establish clean-up and support procedures to be followed during rehabilitation of any areas where a roof fall has occurred or the roof has been removed by mining machines or by blasting. It requires that persons who perform the rehabilitation work at each individual site be instructed in these procedures before rehabilitation is started. Normally, such instructions would be given by a representative of mine management at the rehabilitation site. Establishing clean-up and support installation procedures on a site-by-site basis allows the particular conditions present to be assessed, and a safe approach to rehabilitating the area to be developed.

The final rule further requires that ineffective, damaged or missing roof support at the edge of a rehabilitation area be replaced or equivalent support provided before rehabilitation work is started. The roof supports at the edges of a roof fall frequently are damaged, loosened or dislodged by the fall and must be replaced or equivalent support installed to secure the roof before rehabilitation can be safely started.

Some commenters suggested that provisions be included in the final rule that would require a rehabilitation plan to be developed for approval by the MSHA District Manager and, after approval, posted at the rehabilitation site. These commenters expressed the view that it was MSHA's responsibility to evaluate the plan and that posting it

at the work site would provide a quick reference in the event of questions or problems.

The basic purpose of a rehabilitation program is to assure development of safe work procedures for the persons performing rehabilitation work before such work is begun. The final rule reflects this purpose by requiring that the operator establish clean-up and support procedures to be followed during rehabilitation work and instruct the persons who perform such work in these procedures before rehabilitation work is started. Adding requirements for MSHA evaluation and approval of rehabilitation plans before they are implemented would not always be in the best interest of the safety of miners, and may impose unnecessary delay in rehabilitating unsupported areas. The final rule, therefore, does not adopt this approach.

Paragraph (b) requires that persons performing rehabilitation work be experienced in this work or that they be supervised by a person, designated by the mine operator, who has experience in rehabilitation work. Because of the hazardous nature of rehabilitation work, it is essential that inexperienced persons not perform such work without proper supervision.

Some commenters suggested that the person designated by the operator to supervise the rehabilitation work be required to be a "certified person." The fact that persons are certified does not always mean that they possess skills related to rehabilitation work. In addition, such a requirement would exclude persons who are experienced and knowledgeable in rehabilitation work but are not certified.

Paragraph (c) addresses the supports to be installed where rehabilitation work is not being performed. The standard applies to the active workings of mines, and requires that posts be set on at least 5-foot centers across each entry to the location. Equally effective supports are also permitted to be used. This precaution controls expansion of the unsupported area, and alerts persons to the hazard of unsupported roof.

The proposed requirement for a readily visible warning to be posted or a physical barrier installed at the entrance to areas not being rehabilitated is deleted from the final rule. The requirement for posts on 5-foot centers will provide a visible indicator of the unsupported area and prevent inadvertent entry by alerting persons to the hazards in the area.

The term "mining machines" has been added to this standard to clarify that the standard applies to roof removed by mining machines, as well as to roof

removed by blasting. In addition, the final rule specifies the Agency's intention that the standard apply to active workings to avoid the possible interpretation that these supports may be required in abandoned areas.

Section 75.213 Roof support removal.

This standard, which is derived from existing § 75.204 and existing criteria in § 75.200-14, establishes requirements for removing permanent roof supports. It sets forth precautions to minimize the hazards involved in the removal of roof supports and identifies circumstances under which roof supports cannot be removed. These requirements replace the existing criterion which provided that operators who intend to recover roof supports should include a detailed plan for such recovery in the roof control plan.

Paragraph (a) specifies that the removal of permanent roof supports be done either by persons experienced in this work or by persons under the supervision of a person designated by the operator, who is experienced in removing roof supports. Also, persons performing this work are required to have at least one year of underground mining experience so that they are aware of the general hazards associated with underground mining.

The proposal provided for persons removing permanent roof supports to perform this work in the presence of a "supervisor," and assigned the supervisor certain tasks. Some commenters opposed the use of terms in safety standards which suggest job titles or classifications. In response, the final rule requires that permanent roof support removal be done by experienced persons, or that persons performing this work be supervised by an experienced person designated by the operator. The purpose of this requirement is to assure that at least one person who is knowledgeable and experienced in the removal of permanent roof support is present when this work is performed.

Some commenters suggested that the removal of permanent roof supports be prohibited, except where necessary to remove broken crossbars along travelways or haulageways. They stated that the dangers miners are exposed to in doing this type of work outweigh the benefits gained by removing the supports.

The primary purpose for removing roof supports is to accommodate blasting of the mine roof to obtain additional height for the installation of an overcast or belt conveyor drive. Crossbars, beams, and other similar supports are also removed to allow the mine roof to cave, relieving roof

pressures. MSHA believes that this work can be performed safely by following the practices specified in this standard. The Agency recognizes, however, that the removal of roof bolts is particularly hazardous where full pillar extraction is conducted or adverse roof conditions are present. Indicators such as roof bolt torque readings or the condition of conventional support may show excessive loading, roof fractures or other signs that the roof is weak. The removal of permanent roof supports under these conditions is addressed by the final rule as discussed below.

Paragraph (b) requires a person designated by the operator to examine the roof conditions in the area where the supports are to be removed before this work is started. The roof conditions in these areas must be evaluated to determine whether it is safe to remove the supports.

Paragraph (c) requires at least one row of temporary supports on not more than 5-foot centers or equivalent support, to be installed prior to the removal of crossbars, beams or similar supports. These supports must be installed across the opening from which the supports are to be removed. If one row of temporary supports is not sufficient to assure safe removal, the standard requires additional supports to be installed across the opening. This provision revises the existing criterion which specified that at least 2 rows of posts on not more than 4-foot centers be installed across the opening within 4 feet of the location where the supports are to be removed. This revision was made in response to commenters who stated that the supports required by the existing standard was excessive in most applications. The purpose of installing these temporary supports is to prevent a roof fall that may be induced by removal of the crossbars, beams, or similar supports, from extending beyond the area from which the supports are removed. MSHA recognizes that the number of temporary supports necessary to accomplish this goal can vary depending on the number of crossbars, beams, or similar supports that are to be removed. For example, when only one crossbar is being removed, one row of temporary supports may be sufficient to prevent a roof fall from extending beyond the location where the support is being removed. On the other hand, when multiple supports are being removed, two or more rows of breaker posts may be necessary. In addition, other factors, such as the condition of the roof in the area where supports are to be removed, would

influence the number of supports that should be installed.

Paragraph (d)(1) addresses the removal of roof bolts. The standard requires a temporary support to be installed as close as practicable to each roof bolt being removed. After the bolts are removed, if the temporary supports are also removed, this work must be done from a location under permanent supports which has not been disturbed. The temporary supports provide protection for persons removing the roof bolts. Once the bolts have been removed, the temporary supports are the only means of support. Therefore, the final rule prohibits the removal of these temporary supports unless they are removed remotely from a location under permanent supports.

Paragraph (d)(2) prohibits the removal of roof bolts in areas where full pillar extraction is conducted. Full pillar recovery is designed to result in total caving of the area after the pillars have been removed. Removing roof bolts in these areas would, therefore, be extremely hazardous.

Paragraph (e) specifies that each entrance to an area where roof supports have been removed shall be posted with a readily visible warning or a physical barrier installed to impede travel into the area. Some commenters suggested that this standard require both a visible warning and a physical barrier to prevent miners from unintentionally entering these areas. They also stated that the cost of installing both methods would be justified by the protection they would provide to miners. The purpose of this standard is to provide a warning for persons approaching an area where the roof is hazardous. The Agency believes that this can be accomplished either by a visible warning or a physical barrier, and that requiring both methods is unnecessary.

Paragraph (f) outlines the conditions under which removal of permanent roof supports is prohibited. Under the final rule, supports cannot be removed where roof bolt torque or tension measurements or the condition of conventional roof supports indicate excessive loading, where roof fractures are present, or where there is any other indication that the roof is structurally weak. In these areas, any disturbance of the roof supports may trigger a roof fall with resultant injuries or fatalities. An exception has been added to this standard to allow the removal of supports if the persons involved in such removal are in a remote location under supported roof. For example, roof supports could be removed through the use of cables pulled from a safe distance

so that no miners are exposed to roof fall hazards.

Paragraph (g) is new and specifies that the provisions of this section do not apply when removing conventional support for starting crosscuts and pillar splits or lifts. This provision reflects Agency practice of not considering removal of supports in these situations in the same context as other types of roof support removal. However, the standard requires that the roof conditions be determined before the supports are removed.

Section 75.214 Supplemental support materials, equipment and tools.

This section is derived from existing §§ 75.202 and 75.202-1 and requires supplies of supplementary support materials, equipment and tools in the event adverse roof conditions are encountered or a roof fall occurs. These materials must be available in a quantity sufficient to support the roof if adverse roof conditions are encountered or a roof fall accident occurs. The purpose of the standard is to assure that supplemental support materials and the necessary tools for their installation are available on or near each working section. These supplies will expedite recovery operations in the event of an accident, and provide for the installation of supplemental supports when adverse roof conditions are encountered.

These provisions were not included in the proposal although provisions for supplementary support materials did appear in the preproposal draft. Several commenters objected to this proposed deletion suggesting that supplementary support materials are necessary in emergency situations. Upon reconsideration, the Agency has concluded that provisions for supplies of supplementary support materials, equipment and tools should be retained in the final rule.

However, the final rule deletes existing standards in §§ 75.202 and 75.202-1 which address the regular supply of support materials for areas exposed during the mining cycle. This change is responsive to the concerns of several commenters who suggested that operators be allowed the flexibility to decide how support materials are supplied to each section. It also recognizes that the installation of supports in areas where persons work or travel is the important element that should be addressed by the final rule, not how the supports are supplied to the working section.

Section 75.215 Longwall mining systems.

This new provision provides that for each longwall mining section the roof control plan must specify the support methods that will be used to maintain a safe travelway out of the section through the tailgate side of the longwall. In addition, the plan must set forth the procedures that the operator will follow should a fall occur that prevents travel out of the section through the tailgate side of the longwall, despite the support measures taken.

These provisions are derived from a study undertaken by MSHA and Agency experience. On January 28, 1985, MSHA established a task force to study two-entry mining systems in underground coal mines. On June 12, 1985, MSHA issued its report, *Two-Entry Longwall Mining—A Technical Evaluation*, which contained 35 recommendations directed at safe operation of these mining systems. Following the report, on July 18, 1985, MSHA held a meeting in Denver, Colorado, to brief the public on the Agency's task force report. At that meeting and in subsequent response to the report, members of the mining public suggested that the MSHA include the recommendations in the appropriate coal mine safety standards under review to afford opportunity for comment through the rulemaking process. Consistent with these suggestions, the Agency included the four recommendations that were applicable to roof control in the preamble discussion of the proposed rule.

For mines using longwall mining systems, the report specifically recommended that: (1) Systematic supplemental support be installed throughout the tailgate entry prior to mining a panel; (2) systematic supplemental support for tailgate entries of subsequent longwall panels be installed in advance of frontal abutment stresses of the adjacent panel being mined; (3) an examination of these entries be made at least once every seven days; and (4) procedures be formulated by the operator that address the actions to be taken should the tailgate travelway on a longwall panel be closed due to a ground failure. The term "longwall panel" refers to the block of coal isolated by the development entries, which is to be removed by the longwall mining unit.

MSHA specifically solicited comment and data on the merits of these provisions, the applicability of the provisions to all longwall mining systems, and whether the provisions would be more appropriate as criteria

for approval of mine roof control plans for longwall mining or as standards applicable to all mines using longwalls.

The Agency received a wide range of comments. Some commenters suggested that the provisions be included in the final rule as standards applicable to all longwall mining systems. They stated that the recommendations were in the nature of existing standards and to include them as plan-approval criteria provisions would diminish protections currently afforded miners. Other commenters suggested that the recommendations be included in the final rule as criteria and be applicable only to longwall panels developed with two entries. They stated that mining conditions at various depths, different coalbeds, and differences in equipment demand the site-specific approach afforded by mine roof control plans.

The travelways on all longwall panels are through the headgate entries, the tailgate entries, and the bleeder entries in by the face. Travelways are more easily maintained on the headgate side of longwall panels since these entries are adjacent to solid coal, while the tailgate entries are adjacent to mined-out areas. Therefore, additional supports in tailgate entries are frequently necessary to maintain a safe travelway from this side of the longwall panel. In the event of life-threatening conditions, such as a fire in the intake aircourse or an outburst of the longwall face which impedes passage, egress from the longwall panel for persons working in by the affected areas may be limited to one side of the longwall. Keeping both the headgate and tailgate entries open also assures that adequate ventilation can be maintained for the longwall mining unit.

In longwall panels developed with two entries, a roof fall in the tailgate entry often poses an immediate obstruction to travel along that side of the longwall panel and can impair ventilation of the longwall face, unless a travelway is available adjacent to the gob through the bleeder entries. In longwall panels developed with more than two entries, a roof fall on the tailgate side may not initially impede passage, as a route bypassing the obstruction through the adjoining tailgate entries or bleeder entries may be available. Similarly, ventilation may not initially be adversely affected since an aircourse through other tailgate entries may still be intact. However, when mining progresses to a point where the longwall face abuts the failed area, exit from the panel on the tailgate side can be blocked and ventilation of the longwall face may be impaired.

Recognizing that falls along tailgate entries of longwalls can present similar

hazards, the final rule applies to all mines. The final rule also acknowledges the concern of commenters that variation among mining conditions and other such factors warrant an individualized approach. This is accomplished by requiring that support methods for tailgate entries and safety procedures in the event of a blocked tailgate travelway be set forth in the roof control plan of each mine.

Consistent with this approach, § 75.222(g) of the final rule provides criteria for evaluating support in longwall tailgate entries, and the factors that should be addressed when a fall prevents travel on the tailgate side of a longwall. These provisions, based on the recommendations of MSHA's task force report, provide guidance as to when additional support should be installed and describe the safety issues that should be addressed if travel through the tailgate side of a longwall panel is blocked. Among the issues to be addressed are communication systems, monitoring of the ventilation system and reinstruction of miners on the availability and use of self-contained self-rescue devices (SCRS).

The term "travelway" as used in this final rule, is not to be construed to mean "escapeway." Existing MSHA standards, 30 CFR 75.1704, 75.1704-1, 75.1704-2, and 75.1707, establish requirements for escapeways. These standards are also being reviewed as part of a separate rulemaking to revise and update the Agency's standards for ventilation of underground coal mines.

The task force recommendation that examinations be made of tailgate entries at least every seven days is not included in the final rule. Examination of these entries is already required by existing standards at 30 CFR 75.305, which require at least one entry for each intake and return aircourse to be examined each week for hazardous conditions. Tailgate entries are either intake or return aircourses.

Section 75.220 Roof control plan.

This standard revises and consolidates existing §§ 75.200 through 75.200-4, which address roof control plans and programs. It narrows the scope of roof control plans, while retaining the basic requirement that each mine be operated in accordance with a roof control plan approved by the District Manager.

The roof control plan concept, which has been used effectively throughout the coal mining industry, grew out of a need for flexibility to address the unique conditions of each mine. Under the plan approach, roof conditions and experience with such conditions in the

mine are addressed on a mine-by-mine basis. For this reason, the majority of commenters endorsed continuing the use of approved plans.

Currently, roof control plans address nearly all aspects of roof control practice at mines. As a result, many roof control plans have become unnecessarily voluminous and complex. To make roof control plans more relevant and less burdensome, existing criteria generally applicable to all mines are included in the final rule as mandatory standards. Roof control plans will therefore contain only the particular roof control measures necessary to address the unique conditions of the mine, making them less complex and more useful to the persons responsible for implementing these plans.

The requirement of a roof control plan for each mine in addition to compliance with the standards set forth in the final rule recognizes that standards of general applicability cannot be developed to address all necessary aspects of roof support for all mines. While standards applicable to all mines can be formulated, they fall short of addressing the particular hazards and problems of roof, face and rib control presented by complex combinations of variables such as coal seam composition, surrounding geological conditions and the mining system employed. Thus, in addition to establishing standards that have general application, the final rule also requires a roof control plan for each mine. In this plan, the roof control safety measures not specified by the standards are defined on a mine-by-mine basis.

Under the final rule, each operator is required to develop and follow a roof control plan approved by the District Manager. The operator's plan must be suitable to the prevailing geological conditions and the system of mining to be used at the mine. The operator is also required to take additional measures if unusual hazards are encountered.

The final rule retains the existing procedure that the operator submit the proposed roof control plan, or revisions to an existing approved plan, to the District Manager for approval. Added to this is a new provision which specifies that when revisions to an approved roof control plan are proposed by the operator, only the revised pages need to be submitted unless otherwise specified by the District Manager. Therefore, the entire plan need not be submitted when, for example, the operator proposes a small addition or the replacement of a few pages. However, the District Manager has the discretion to require that the entire plan be resubmitted when

the submission of revised pages would prevent effective evaluation of the plan.

Consistent with current practice, the operator's roof control plan and any revisions to it will be evaluated independently for approval. The focus of the District Manager's evaluation will be on whether the plan's provisions, if implemented, will result in adequate support and control of the roof, face and ribs under the particular conditions at the mine. In the course of this evaluation, the applicable criteria in § 75.222 of the final rule will be considered. As described below, plans not conforming with these criteria may be approved, provided that safe and effective roof, face and rib control can be achieved.

Paragraph (b) sets out the procedure for notification of approval or denial of approval of roof control plans, retaining the existing requirement that the operator be given written notice of approval actions. With clarifying changes, the rule also retains the existing procedure for exchanging information when approval of a proposed plan or revision is denied. Under the final rule, the operator will be advised of the deficiencies of the proposed plan or revision for which approval is denied, together with changes recommended for approval. The operator will then be given an opportunity to discuss with the District Manager the problems identified and potential solutions. The revised language of the rule is intended to clarify the operator's responsibility for developing an appropriate roof control plan and MSHA's role in evaluating the plan for approval.

The final rule authorizes the District Manager to require that the effectiveness of new support materials, devices or systems, other than roof bolts and accessories, be demonstrated by experimental installations. The phrase "other than roof bolts or accessories" has been added to the final rule because testing and evaluation of new types of roof bolts and accessories are addressed in § 75.204 of the final rule.

Consistent with the existing rule, the final rule provides the operator with the opportunity to discuss the deficiencies and changes in a proposed roof control plan with the District Manager.

Paragraph (c) retains the proposed requirement that roof control plans or revisions not be implemented until approved.

Paragraph (d) specifies that before implementing a revision to an approved roof control plan, all persons who are affected by the revision must be instructed in its provisions. Complete understanding of the requirements of the

approved roof control plan for the mine is essential to effective implementation. For clarity, the terms "supervisors and miners," which appeared in the proposal, have been replaced in the final rule by the phrase "all persons."

Paragraph (e) requires that the roof control plan and any revisions be made available to the miners and representatives of miners at the mine. Making the plan and revisions available to the miners and their representatives will assure that all workers and their representatives at the mine are informed of provisions in the roof control plan.

In response to commenters, the proposed provision specifying that roof control plans and revisions be posted is not included in the final rule. These commenters stated that posting the plan is an impractical way to provide miners access to it and that the plan is made available to the miners in other ways, including through training. MSHA agrees that the purpose of this provision is to make plans available to miners. Therefore, the final rule requires roof control plans to be made available to miners and their representatives and does not contain a posting requirement.

Paragraph (f) revises the proposed requirement that all roof control plans be revised to meet the requirements of this new Subpart C within 6 months from the effective date of the final rule. This provision will only affect roof control plans which contain provisions in conflict with the final rule. Revising conflicting provisions in plans will assure that miners are aware of the requirements in effect and will eliminate any ambiguities that may arise.

Some commenters suggested that a provision be added to the final rule that would require mine management, at the start of each shift, to review with the miners in each working section the roof control measures that are needed to effectively control the roof. These commenters stated that because the roof conditions can change from shift to shift, the supervisors and miners working on each oncoming shift should be made aware of the changes and any materials needed to control the roof. MSHA recognizes that this is a good safety practice that is often followed in the mining industry. However, since the final rule establishes operator responsibility for controlling the mine roof, face and ribs, together with safety standards for certain support and control techniques, the Agency does not believe that such a provision needs to be included in the final rule.

Several commenters recommended that a separate set of regulations be developed as part of this rulemaking which would establish comprehensive

new procedures for approving all mine plans. These commenters recommended procedures which would establish an appeal process to resolve issues regarding plan provisions upon which the operator and the District Manager cannot agree. Based on MSHA experience with the current plan-approval process, the vast majority of issues raised during plan-approval are resolved through staff discussion between the mine operator and District Manager. Issues that cannot be resolved in this manner are normally raised to the District Manager level. However, if a mine operator disagrees with a decision of the District Manager, the existing plan-approval process inherently allows the mine operator to appeal the decision to the Administrator for Coal Mine Safety and Health for final resolution. The Agency will address the formalization of this appeal procedure in the forthcoming proposed rule for Ventilation of Underground Coal Mines. When the ventilation rule is finalized, the Agency will propose revisions to this final rule to formalize appeal procedures for roof control plans.

A commenter suggested that the final rule should provide miners, through their representatives, to have the right to participate in the approval process for roof control plans. This recommendation and the issues which it raises will be addressed by the Agency in the proposed rule for Ventilation. When the Ventilation proposal is finalized, the Agency will propose appropriate amendments to the roof control regulations to reflect the approach developed during the ventilation rule-making with respect to miners participation.

Section 75.221 Roof control plan information.

This final rule is derived from existing §§ 75.200-5, 75.201-1, and criteria in §§ 75-200-7, 75.200-12 and 75.200-15, except paragraphs (a)(6), (7), and (10) which are new. It specifies the information that is required in roof control plans.

The information required by this standard forms a basis for MSHA evaluation on operators' plans. The information required to be submitted with each plan includes identifying information, data related to the strata in which mining is to be conducted, and descriptions of the mining methods and support materials to be used. New requirements of the rule address the use of ATRS systems, tunnel liners, and methods of protecting persons from falling materials at drift openings and when mining within 150 feet of an

outcrop. Flexibility is needed in these areas to address the particular conditions at each mine.

In response to commenters, the proposed requirement for the "signature" of the company official responsible for the roof control plan has been changed to require this person's "name." Commenters suggested this change would clarify the purpose of the rule which is to identify a company official that MSHA may contact to resolve any issues that arise during evaluation of the plan.

In response to commenters, the final rule retains the existing requirement that roof control plans show the thickness of each stratum up to and including the main roof over the coalbed and for a distance of 10 feet under the coalbed. These commenters stated, and MSHA agrees, that this information is necessary to determine the widths of entries, size of pillars, and other measures necessary to provide effective roof control.

Commenters suggested that the final rule require that the "planned" width of openings be specified in roof control plans, noting that the width of openings cannot be predicted with precision. MSHA agrees and the final rule includes this suggestion. MSHA recognizes that the width of openings can at times be inadvertently exceeded for various reasons. This issue is also addressed in § 75.203(e) which requires additional roof support when planned widths are exceeded by specified distances.

To clarify the final rule and in response to comments, paragraph (a)(9) provides that the list of support materials specified in proposed roof control plans include all the support materials that are "required" be used in the support system described by the roof control plan. Support materials that may be installed in addition to the supports specified by the roof control plan are not required to be listed.

The final rule requires that the roof control plan identify the method of protecting miners from falling material at drift openings and when mining approaches within 150 feet of an outcrop. The support needed at drift openings can vary substantially from mine to mine. Mining near an outcrop can present unique roof control hazards due to roof fractures caused by surface blasting and other conditions created by water seepage and geological irregularities.

Some commenters suggested that roof control plans identify coalbeds above and below the mine that are being or have been mined. These commenters stated that this information was necessary to properly evaluate roof

control plans. MSHA agrees that this is useful information. However, this information is already available to the Agency under 30 CFR 75.316-1(a)(1) and need not be duplicated by the requirements of these standards.

As discussed in § 75.204(f)(2) of the final rule, a provision has been added to this section that requires mine operators to specify the intervals at which test holes will be drilled when mechanically anchored tensioned bolts are used. Consistent with the removal of standards addressing arched roof, a provision which appeared in this section of the proposal that would have required the method and frequency of evaluating the coal roof thickness for natural roof support created by means of an arched roof, has been deleted from the final rule.

One commenter suggested that a provision be added to the final rule which would require roof control plans to show faults and other disturbances that are indicated by a satellite strata survey. MSHA's Technical Support Group has conducted numerous satellite surveys in the last ten years. These surveys have provided useful information for some mines but have shown no benefit at others. While satellite surveys have potential merit, the collection and distribution of this type of satellite data is not, to MSHA's knowledge, sufficiently established to make its use a requirement under the final rule.

Section 75.222 Roof control plan approval criteria.

The final rule is derived from existing criteria in §§ 75.200-6 through 75.200-9, 75.200-11 and 75.200-12, except paragraph (e) which is new. These provisions are criteria, as opposed to standards, that are to be considered by the operator in formulating roof control plans and by MSHA in evaluating plans and revisions submitted by operators for approval. The purpose of the criteria is to provide guidance for the development and approval of roof control plans, while retaining the flexibility needed to address the variations among mining conditions. For example, when roof bolts are used, a criterion provides that they should be installed on centers not exceeding 5 feet lengthwise and crosswise. While this spacing is commonly used, the conditions at some mines require that roof bolts be installed closer together, while under more stable conditions, they may be safely installed farther apart. The final rule also authorizes MSHA to require safety measures in addition to those described by the plan-approval criteria and standards in the final rule.

Correspondingly, roof control plans not conforming to the criteria in this section may be approved, provided that the methods proposed by the operator will result in effective control of the mine roof, face and ribs.

Paragraph (a) specifies that the provisions in this section are criteria that are to be considered when formulating and approving roof control plans. In response to commenters recommending evaluation of the applicability of criteria at each mine, the final rule specifies that the criteria be "considered on a mine-by-mine basis." Consistent with this concern, these commenters also suggested that the proposed phrase "generally accepted criteria" be removed as this could be misconstrued to mean that the criteria provisions were applicable to all mines. To avoid confusion, the final rule does not retain this characterization of the criteria for roof control plans.

The provisions in this section are intended to provide the flexibility needed to address the variations among mining conditions at individual mines. The plan-approval criteria reflect MSHA experience and industry practices, and provide a reference point for evaluating roof control measures for effectiveness.

In addition to the flexibility provided for by the plan-approval criteria, the final rule retains two existing provisions that are intended to facilitate the development and approval of mine-specific roof control plans which are suitable to each mine's conditions and mining system. Under the final rule, District Managers are authorized to require, before approving a plan or revision, that safety measures be included which are in addition to those provided for by the plan-approval criteria or the final rule standards. Because the Agency's purpose was to write comprehensive new standards and criteria, this provision was not included in the proposed rule. On reconsideration, however, MSHA has concluded that current experience and practices are inadequate to predict and address unique hazards at individual mines which, if the mine roof control plans are to be adequate, will need to be addressed.

Consistent with the objective of maintaining the flexibility to develop suitable roof control plans, the final rule also authorizes District Managers to approve roof control plans which do not conform with plan-approval criteria that would normally apply. This provision, which was included in the proposal, recognizes that future development may offer effective roof, face, and rib control as applied at a particular mine, and

should be permitted to be implemented in accordance with the mine's roof control plan.

Paragraph (b) addresses roof bolting and provides criteria for the spacing and torquing of roof bolts. Proper spacing and torquing of roof bolts are directly related to support capacity.

Provisions addressing "combination roof support" which appeared separately in the proposal, have been combined with the roof bolting criteria provisions since all combination systems include some roof bolting.

Several commenters suggested that the proposed criterion for 5-foot spacing of roof bolts be changed to 4-foot spacing. They stated that 4-foot spacing of bolts is normally used throughout the industry. MSHA agrees that some mines are currently installing roof bolts on 4-foot spacings. However, due to the composition of the strata and roof conditions encountered at different mines, the spacing of roof bolts and other supports will vary from mine to mine and, in some situations, from section to section within the same mine. The existing criterion for spacing of roof bolts is 5 feet. This criterion has proven to be effective in providing guidance to operators and MSHA for determining the spacing of roof bolts as well as other supports. Supports on 4-foot spacing will continue to be required where needed for effective roof control.

For purposes of consistency with § 75.204(f)(3) of the final rule and in response to commenters, paragraph (b)(2) has been revised to include a reference to anchorage capacity of the strata. This change specifies that the torque or tension range of tension roof bolts be at least 50 percent of the anchorage capacity of the strata.

The existing criterion which specifies that openings supported only with roof bolts should not be more than 20 feet wide has been deleted. This provision is duplicative of paragraph (b)(3) of this section which specifies that openings more than 20 feet wide should be supported by a combination of roof bolts and conventional supports.

Paragraph (b) also contains provisions that address the use of roof support systems using a combination of bolts and conventional support materials. Paragraph (b)(3) provides that such system should be used where mine openings are to be more than 20 feet wide. These criteria provide that posts should be used to narrow the roadway to 16 feet wide where straight and 18 feet wide where curved; that a row of posts should be set for each 5 feet of space between the roadway post and the rib; and that mine openings should not exceed 30 feet.

The proposed criterion for width of openings where natural roof support is created by means of an arched roof has been deleted from the final rule because "arched roof" is no longer addressed in the final rule.

The criteria provisions which addressed the use of conventional supports as the sole means of roof support that were included in this section of the proposal have been included in § 75.206(a) of the final rule as mandatory standards.

Paragraph (c) addresses the installation of roof supports using mining machines with integral roof bolters. The provisions in this paragraph, which address the spacing of supports and width of roadways, are unchanged from the proposal.

Paragraph (d) addresses pillar recovery and sets forth the criteria for pillar size, mining of pillars, width of openings and roadways leading to pillars and the spacing of breaker and roadside-radius posts during pillar recovery. Consistent with the existing criteria, the final rule specifies that breaker posts and roadside-radius posts should be installed on 4-foot centers. One commenter suggested that this spacing be increased to 5-foot centers so that they would be consistent with the spacing of most other supports. MSHA recognizes that 5-foot spacing of breaker posts may be appropriate in some mines depending on a variety of factors; such as depth of the coalbed and the type of roof strata. However, experience obtained through the use of the existing criterion indicates that breaker posts should be installed on at least 4-foot centers at the majority of mines.

The final rule retains the existing criterion which states that, before full pillar recovery is started, posts should be installed to limit roadway widths to 16 feet in areas where roof bolts are used as the only means of roof supports. Commenters suggested that this provision be deleted, stating that these posts restrict the movement of mining equipment without providing a corresponding safety benefit. They further stated that the roof in these areas is adequately supported during development and, unless hazardous roof conditions are encountered, should be adequate for retreat mining. MSHA recognizes that because of the various geological conditions encountered at underground coal mines, this criterion may not be appropriate for all mines. However, at some mines, it is necessary to reduce the roadway width before pillar recovery is started to assure safe removal of the coal pillars. Inclusion of this provision as a criterion, as opposed to a mandatory standard, will provide

the flexibility to address the need for reducing roadway width on a mine-by-mine basis.

A provision which appeared in this section of the proposal addressing the use of temporary supports in conjunction with ATRS systems has been moved to § 75.209(b) of the final rule.

Paragraph (e) addresses the support of openings that create an intersection. It states that such openings should be permanently supported or that at least one row of temporary supports be installed on 5-foot centers prior to any other work or travel in the intersection. This provision appeared as a standard in the proposed rule. However, commenters suggested that the proposed provision was too restrictive and not appropriate for all mines. MSHA agrees that greater flexibility should be afforded with regard to supports installed in openings to intersections. Roof conditions vary from mine to mine and influence the spacing and number of posts, number of rows of posts or the use of roof bolts. Therefore, this provision has been incorporated into the criteria section of the final rule.

Section 75.223 Evaluation and revision of roof control plans.

Section 75.223 requires that revisions to roof control plans be proposed by operators when conditions indicate that the plan is not suitable for controlling the roof, face or ribs, or coal or rock bursts. Under this standard, any condition which indicates the plan is not suitable for controlling the roof, face, ribs, or coal or rock bursts requires that the plan be revised. The phrase "coal or rock bursts" has been added to this standard to clarify that it is also necessary to revise a plan that is not suitable for controlling coal or rock bursts. This addition is consistent with § 75.202 and clarifies that the control of coal or rock bursts is included within the scope of control of roof, face and ribs.

This standard also requires the plan to be revised when accidents and injuries at the mine indicate the plan is inadequate. The accident and injury experience is required to be reviewed at least every 6 months. This six-month review of accident and injury experience was contained in the preproposal draft but not included in the proposal. Upon reconsideration, MSHA believes that a regular review of the accident and injury experience at the mine will supply important data with which to evaluate the adequacy of roof control plans.

The proposal that unplanned roof or rib falls in active workings be plotted on a mine map and that the map be made available to MSHA and miners' representatives has been retained in the final rule. Plotting unplanned falls on a mine map will assist in evaluating the effectiveness of the roof control system and identification of hazardous trends.

In the preproposal draft and the proposal the Agency asked for comments with respect to the deletion of the requirement for 6-month review of roof control plans by MSHA. Several commenters suggested that this requirement should remain in effect, indicating that plans must be periodically evaluated by MSHA to assure that they are revised as conditions warrant.

Agency personnel currently review the adequacy of roof control plans during regular inspections which are conducted at least quarterly in underground coal mines. In addition, MSHA reviews the adequacy of the roof support system during investigations of unplanned roof falls. These current practices have been successful in assuring that roof control plans are reviewed at least every 6 months. To clarify that these current practices will continue, the final rule retains the existing standard requiring that roof control plans be reviewed by MSHA at least every 6 months.

Petitions for Modification

Operators with petitions for modification that involve the standards revised in this rulemaking need to determine the status of those petitions before the effective date of this final rule. If there are sections of this rule which are renumbered but remain substantively unchanged from the existing standards, operators with modifications granted for these standards need not reapply. However, operators with modifications granted for standards that have been revised will need to comply with the new rule on its effective date. New petitions for modification of the final rule may be submitted in accordance with 30 CFR Part 44. If Agency assistance is needed, questions should be directed to the appropriate MSHA District Office.

Derivation Table

The following derivation table lists the number of each standard in the final rule (New No.), and the number of the existing standard (Old No.) from which the new standard is derived. An asterisk (*) indicates existing criteria in Subpart C.

New No.	Old No.
75.200.....	New
75.201(a).....	New
75.201(b).....	75.200-11
75.202.....	75.200 and 75.200-14(g)*
75.203(a).....	75.201, 75.201-1 and 75.201-2
75.203 (b) and (d).....	New
75.203(c).....	75.200-7(c)(2)*
75.203(e).....	75.201-1(b)
75.204(a).....	75.200-7(a)(1)*
75.204(b).....	75.200-12(c)*
75.204(c).....	75.200-7(a) (4) and (5)*
75.204(d).....	75.200-7(a)(6)*
75.204(e).....	75.200-7(b)(1)*
75.204(f)(1).....	75.200-7(a) (2) and (3)*
75.204(f)(2).....	New
75.204(f)(3).....	75.200-7(b)(2)*
75.204(f)(4).....	75.200-7(b)(3)(ii)* and 75.203
75.204(f) (5) and (6).....	75.200-7(b)(3)(iii)*
75.204(f)(7).....	New
75.204(f)(8).....	75.200-7(b)(4)*
75.204(g).....	New
75.205(a), (b), and (c).....	75.200-12(b)(1)*
75.206(a)(1).....	75.200-8(d)*
75.206(a)(2).....	75.200-8(c)(1)*
75.206(a)(3).....	75.200-8(c)(3)*
75.206(a) (4) and (5).....	75.200-8(c)(2)*
75.206(a)(5).....	75.200-8(c)(4)*
75.206(b)(1).....	75.200-8(a)(2)*
75.206(b)(2) (i).....	75.200-8(a)(3)*
75.206(b)(2) (ii) and (iii).....	75.200-8(a)(4)*
75.206(b)(3).....	75.200-8(a)(5)*
75.206(c) and (d).....	New
75.206(e).....	75.200-8(b)(3)*
75.206(f).....	75.200-8(b)(2)*
75.206(g).....	75.200-8(b)(4)*
75.206(h).....	75.200-8(b)(5)*
75.207(a).....	75.201-2 (d) and (e)
75.207(b)(1).....	75.200-11(d)*
75.207(b)(2).....	75.200-11(e)*
75.207(c).....	75.200-11(f)*
75.207(d).....	75.200-11(h)(1)*
75.208.....	New
75.209.....	New
75.210(a).....	75.200, 75.200-13(a) (1)* and (2)*
75.210(b).....	75.200-13(a)(3)*
75.210(c).....	75.200-13(b)(1)*
75.210(d).....	75.200-13(a)(3)*
75.211 (a) and (b).....	75.205
75.211(c).....	75.202 and 75.205
75.211(d).....	75.200-13(b)(2)*
75.212 (a) and (b).....	New
75.212(c).....	75.200-13(b)(3)*
75.213(a)(1).....	75.200-14(a)* and 75.204
75.213(a)(2).....	75.200-14(b)* and 75.204
75.213(b).....	75.200-14 (c)*
75.213(c).....	75.200-14 (e)* and (f)*
75.213(d)(1).....	75.200-14 (e)* and (f)*
75.213(d)(2).....	75.200-14(d)(2)* and 75.204
75.213(e).....	75.200-14(h)* and 75.204
75.213(f).....	75.200-14(d) (1)*, (3)* and 75.204
75.213(g).....	New
75.214.....	75.202-1
75.215.....	New
75.220(a)(1).....	75.200, 75.200-2 and 75.200-3
75.220(a)(2).....	75.200 and 75.200-4
75.220(b).....	75.200-4
75.220(c).....	New
75.220(d).....	75.200-1
75.220(e).....	75.200
75.220(f).....	New
75.221(a)(1).....	75.200-5(a)*
75.221(a)(2).....	75.200-5(b)*

New No.	Old No.
75.221(a)(3).....	75.200-5(c)*
75.221(a)(4).....	75.200-5(e)*
75.221(a)(5).....	75.200-5(f)*
75.221(a) (6) and (7).....	New
75.221(a)(8).....	75.201-1 and 75.201-2 (a) and (f)
75.221(a)(9).....	75.200-5(f)(2)* and 75.200-7(b)(2)*
75.221(a) (10) and (11).....	New
75.221 (b) and (c).....	75.200-5(f)(1)*
75.222(a).....	75.200-6*
75.222(b)(1).....	75.200-7(c)(1)*
75.222(b)(2).....	75.200-7(b)(2)*
75.222(b)(3).....	75.200-9(a)*
75.222(b)(4)(i).....	75.200-9(b)*
75.222(b)(4)(ii).....	75.200-9(c)*
75.222(b)(5).....	75.200-9(d)*
75.222(c)(1).....	75.200-12(b)(2)*
75.222(c)(2).....	75.200-12(b)(3)*
75.222(d)(1).....	75.200-11(b)*
75.222(d)(2).....	75.200-11(c)*
75.222(d)(3).....	75.200-11(d)*
75.222(d)(4).....	75.200-11(e)*
75.222(d)(5).....	75.200-11(g)*
75.222 (e), (f), and (g).....	New
75.223(a).....	75.200, 75.200-1 and 75.200-2
75.223(b).....	75.200-1
75.223(c).....	New
75.223(d).....	75.200

Redesignation Table

The following redesignation table cross-references the old standard numbers with the standard numbers used in the final rule. An asterisk (*) indicates existing criteria in Subpart C.

Old No.	New No.
75.200.....	75.202, 75.210(a), 75.220(a) (1) and (2), 75.220(d) and 75.223
75.200-1.....	75.220(c), 75.223 (a) and (b)
75.200-2.....	75.220(a)(1) and 75.223(a)
75.200-3.....	75.220(a)(1)
75.200-4.....	75.220 (a)(2) and (b)
75.200-5(a).....	75.221(a)(1)
75.200-5(b).....	75.221(a)(2)
75.200-5(c).....	75.221(a)(3)
75.200-5(d).....	Removed
75.200-5(e).....	75.221(a)(4)
75.200-5(f).....	75.221(a)(5)
75.200-5(f)(1).....	75.221(b)
75.200-5(f)(2).....	75.221(a)(9)
75.200-6.....	75.222(a)
75.200-7(a)(1)*.....	75.204(a)
75.200-7(a) (2)* and (3)*.....	75.204(f)(1)
75.200-7(a) (4)* and (5)*.....	75.204(c)
75.200-7(a)(6)*.....	75.204(d)
75.200-7(b)(1)*.....	75.204(e)
75.200-7(b)(2)*.....	75.204(f)(3), 75.221(a)(9), and 75.222(b)(2)
75.200-7(b)(3)(i)*.....	Removed
75.200-7(b)(3)(ii)*.....	75.204(f)(4)
75.200-7(b)(3)(iii)*.....	75.204(f) (5) and (6)
75.200-7(b)(4)*.....	75.204(f)(8)
75.200-7(c)(1)*.....	75.222(b)(1)
75.200-7(c)(2)*.....	75.203(c)
75.200-7(c)(3)*.....	Removed
75.200-7(d)*.....	75.222(b)(3)
75.200-8(a)(1)*.....	Removed
75.200-8(a)(2)*.....	75.206(b)(1)
75.200-8(a)(3)*.....	75.206(b)(2)(i)

Old No.	New No.
75.200-8(a)(4)*	75.206(b)(2) (ii) and (iii)
75.200-8(a)(5)*	75.206(b)(3)
75.200-8(b)(1)*	Removed
75.200-8(b)(2)*	75.206(f)
75.200-8(b)(3)*	75.206(e)
75.200-8(b)(4)*	75.206(g)
75.200-8(b)(5)*	75.206(h)
75.200-8(c)(1)*	75.206(a)(2)
75.200-8(c)(2)*	75.206(a) (4) and (5)
75.200-8(c)(3)*	75.206(a)(3)
75.200-8(c)(4)*	75.206(a)(6)
75.200-8(d)*	75.206(a)(1)
75.200-9(a)*	75.222(b)(3)
75.200-9(b)*	75.222(b)(4)(i)
75.200-9(c)*	75.222(b)(4)(ii)
75.200-9(d)*	75.222(b)(5)
75.200-10*	Removed
75.200-11*	75.201(b)
75.200-11(a)*	Removed
75.200-11(b)*	75.222(d)(1)
75.200-11(c)*	75.222(d)(2)
75.200-11(d)*	75.207(b)(1) and 75.222(d)(3)
75.200-11(e)*	75.207(b)(2) and 75.222(d)(4)
75.200-11(f)*	75.207(c)
75.200-11(g)*	75.222(d)(5)
75.200-11(h)(1)*	75.207(d)
75.200-11(h)(2)*	Removed
75.200-12(a) (1)*, (2)*, (3)*, and (4)*	Removed
75.200-12(b)(1)*	75.205 (a), (b), and (c)
75.200-12(b)(2)*	75.222(c)(1)
75.200-12(b)(3)*	75.222(c)(2)
75.200-12(b)(4)*	Removed
75.200-12(c)*	75.204(b)
75.200-13(a) (1)* and (2)*	75.210(a)
75.200-13(a)(3)*	75.210 (b) and (d)
75.200-13(b)(1)*	75.210(c)
75.200-13(b)(2)*	75.211(d)
75.200-13(b)(3)*	75.212(c)
75.200-14*	Removed
75.200-14(a)*	75.213(a)(1)
75.200-14(b)*	75.213(a)(2)
75.200-14(c)*	75.213(b)
75.200-14(d)(1)*	75.213(f)
75.200-14(d)(2)*	75.213(d)(2)
75.200-14(d)(3)*	75.213(f)
75.200-14(e)*	75.213 (c) and (d)(1)
75.200-14(f)*	75.213 (c)(2) and (d)(1)
75.200-14(g)*	75.202(b)
75.200-14(h)*	75.213(e)
75.201	75.203(a)
75.201-1(a)	75.221(a)(8) and 75.203(a)
75.201-1(b)	75.203(e)
75.201-2	75.203(a)
75.201-2(a)	75.203(a) and 75.221(a)(8)
75.201-2 (b) and (c)	Removed
75.201-2 (d) and (e)	75.207(a)
75.201-2(f)	75.203(a) and 75.221(a)(8)
75.201-2 (g) and (h)	Removed
75.201-3	Removed
75.202	75.211(c)
75.202-1	75.214
75.203	75.204(f)(4)
75.203-1	Removed
75.204	75.213 (a), (d)(2), (e), and (f)
75.204-1	Removed
75.205	75.211 (a), (b), and (c)

III. Drafting Information

The principal persons responsible for preparing this final rule are: Cloyd Blankenship, Charles S. Battistoni, and

Fred H. Ryan, Coal Mine Safety and Health, MSHA; M. Terry Hoch, Technical Support, MSHA; Earnest C. Teaster, Jr., Office of Standards, Regulations and Variances, MSHA; and M. Peter Garcia, Office of the Solicitor, Department of Labor.

IV. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared a final analysis to identify potential costs and benefits associated with the final changes to its roof, face and rib control standards for underground coal mines. The Agency has incorporated this analysis into the Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In this analysis, summarized below, MSHA has determined that new or revised provisions in the final rule will not result in major cost increases nor have an effect of \$100 million or more on the economy. The rule is not within the criteria for a major rule and, therefore, a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small businesses when developing standards. For purposes of the Regulatory Flexibility Act, MSHA has defined small business entities as mines with fewer than 20 employees. This final rule introduces alternative compliance methods to the existing regulations, several of which will directly benefit small mining operations. In the final rule, MSHA has reorganized, updated, and clarified existing provisions. The Agency has also deleted existing duplicative provisions and replaced one recordkeeping requirement with a certification provision. In addition, the rule adopts performance-oriented standards when possible.

The primary benefit of the final rule is the protection that the standards will provide to miners who would be endangered by hazards related to falls of roof, face, and ribs in underground coal mines.

In the following summary of the Final Regulatory Flexibility Analysis, MSHA has compared the costs associated with the final requirements with the costs of the existing requirements. A copy of the full analysis is available upon request.

In developing cost estimates, MSHA has taken into consideration industry-wide safety practices. Current compliance costs are related to the following requirements: Labor, equipment purchase and maintenance, and recordkeeping. In calculating the

costs of the final rule, the Agency projected initial compliance costs and annual recurring costs.

MSHA estimates that the initial cost for compliance with the existing requirements amounts to approximately \$189.45 million. Estimated initial costs for the final rule will amount to about \$187.15 million. MSHA estimates that annual recurring costs for compliance with the existing requirements amount to approximately \$189.08 million. Estimated recurring costs for the final requirements will be about \$186.78 million. The final rule represents a cost decrease of about \$2.3 million when compared to the existing rule.

The final regulations will affect approximately 1970 underground mining operations. MSHA estimates that about 1088 of these mines are small businesses. Small mines represent 55% of the underground mines and 35% of the underground sections. Small mines incur about 22% of the compliance cost of the final rule compared to 21% under the existing rule. The final rule represents a 3.3% (\$1.3 million) increase in compliance costs for small mines when compared to the existing rule.

Although the new provision for use of ATRS systems has initial and annually recurring compliance costs of \$1.6 million associated with it, the compliance cost of this provision is offset by a \$11.4 million reduction in costs related to the manual installation of temporary supports. MSHA believes that the requirement for ATRS systems will result in greater safety for miners during roof bolting activities and, in many instances, will contribute to increased productivity as a result of the mining process moving faster.

Under the final rule, alternative compliance methods and a more performance-oriented approach will reduce compliance costs without diminishing the safety of miners. For example, under the final rule, the amount and location of roof support materials supplied to face areas is left to the mine operator's discretion.

V. Paperwork Reduction Act

The recordkeeping provision concerning testing of roof bolts in existing § 75.200-7(b)(3)(iii) is replaced in the final rule with a requirement that the operator certify by signature and date that testing was conducted.

The existing rule contains extensive criteria for evaluating and approving roof control plans. As a result, comprehensive and often complex roof control plans are required for each mine. The final rule retains the requirement that each mine have an approved roof

control plan. However, it reduces the requirements to be specified in a plan by making many of the existing criteria, which are applicable to all mines, mandatory standards. Therefore, roof control plans will be less complex, addressing only the particular roof control measures appropriate to the conditions at the mine which are not addressed by the safety standards.

The final rule requires that roof control plans be revised to meet the requirements of Subpart C within six months from the effective date of the final rule. This provision will only affect roof control plans which contain provisions inconsistent or in conflict with the final rule. As previously discussed, many of the provisions that are currently addressed in roof control plans have been included in the final rule as mandatory standards or have been deleted which, in either case, may no longer need to be addressed in the plan. For example, many existing roof control plans require that a torque wrench be kept on roof bolting machines and that such wrench be used to measure torque on roof bolts. Instead of specifying a tool for evaluating the torque on roof bolts, the final rule requires torque or tension to be measured, permitting the mine operator to determine the method, type of equipment to be used, and the location where this equipment is kept. Revising conflicting provisions in plans will assure that miners are aware of the requirements in effect and will eliminate any ambiguities that may arise.

In response to concerns raised by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1980, the proposed requirement that all roof control plans be revised to meet the requirements of Subpart C within six months after the effective date of the rule has been revised in the final rule. Under the final rule, only plans which contain provisions that are in conflict with Subpart C are required to be revised.

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (Title 44 U.S.C. Chapter 35), the collection of information requirements contained in the final rule have been approved by OMB under control number 1219-0004. Comments regarding collection of information requirements may be directed to the Office of Information and Regulatory Affairs of the OMB, Attention: Desk Officer for the Mine Safety and Health Administration.

List of Subjects in 30 CFR Part 75

Mine safety and health, Underground coal mines, Roof, face and rib support.

Date: January 21, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

Part 75, Subchapter O, Chapter I, Title 30 of the Code of Federal Regulations is amended as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation to 30 CFR Part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. Subpart C of Part 75 is revised to read as follows:

* * * * *

Subpart C—Roof Support

Sec.

- 75.200 Scope.
- 75.201 Definitions.
- 75.202 Protection from falls of roof, face and ribs.
- 75.203 Mining methods.
- 75.204 Roof bolting.
- 75.205 Installation of roof support using mining machines with integral roof bolters.
- 75.206 Conventional roof support.
- 75.207 Pillar recovery.
- 75.208 Warning devices.
- 75.209 Automated Temporary Roof Support (ATRS) systems.
- 75.210 Manual installation of temporary support.
- 75.211 Roof testing and scaling.
- 75.212 Rehabilitation of areas with unsupported roof.
- 75.213 Roof support removal.
- 75.214 Supplemental support materials, equipment and tools.
- 75.215 Longwall mining systems.
- 75.220 Roof control plan.
- 75.221 Roof control plan information.
- 75.222 Roof control plan—approval criteria.
- 75.223 Evaluation and revision of roof control plan.

* * * * *

Subpart C—Roof Support

§ 75.200 Scope.

This Subpart C sets forth requirements for controlling roof, face and ribs, including coal or rock bursts, in underground coal mines. Roof control systems installed prior to the effective date of this subpart are not affected so long as the support system continues to effectively control the roof, face and ribs.

§ 75.201 Definitions.

Automated temporary roof support (ATRS) system. A device to provide temporary roof support from a location where the equipment operator is protected from roof falls.

Pillar recovery. Any reduction in pillar size during retreat mining.

§ 75.202 Protection from falls of roof, face and ribs.

(a) The roof, face and ribs of areas where persons work or travel shall be supported or otherwise controlled to protect persons from hazards related to falls of the roof, face or ribs and coal or rock bursts.

(b) No person shall work or travel under unsupported roof unless in accordance with this subpart.

§ 75.203 Mining methods.

(a) The method of mining shall not expose any person to hazards caused by excessive widths of rooms, crosscuts and entries, or faulty pillar recovery methods. Pillar dimensions shall be compatible with effective control of the roof, face and ribs and coal or rock bursts.

(b) A sightline or other method of directional control shall be used to maintain the projected direction of mining in entries, rooms, crosscuts and pillar splits.

(c) A sidecut shall be started only from an area that is supported in accordance with the roof control plan.

(d) A working face shall not be mined through into an unsupported area of active workings, except when the unsupported area is inaccessible.

(e) Additional roof support shall be installed where—

(1) The width of the opening specified in the roof control plan is exceeded by more than 12 inches; and

(2) The distance over which the excessive width exists is more than 5 feet.

§ 75.204 Roof bolting.

(a) For roof bolts and accessories addressed in ASTM F432-83, "Standard Specification for Roof and Rock Bolts and Accessories", the mine operator shall—

(1) Obtain a manufacturer's certification that the material was manufactured and tested in accordance with the specifications of ASTM F432-83; and

(2) Make this certification available to an authorized representative of the Secretary.

(b) Roof bolts and accessories not addressed in ASTM F432-83 may be used provided they—

(1) Have been successful in supporting the roof in an area of a coal mine with similar strata, opening dimensions and roof stresses; or

(2) Have been tested and shown to be effective for supporting the roof in an

area of the affected mine which has similar strata, opening dimensions and roof stresses as the area where the roof bolts are to be used. During the test process, access to the test area shall be limited to persons necessary to conduct the test.

(c)(1) A bearing plate shall be firmly installed with each roof bolt.

(2) Bearing plates used directly against the mine roof shall be at least 6 inches square or the equivalent, except that where the mine roof is firm and not susceptible to sloughing, bearing plates 5 inches square or the equivalent may be used.

(3) Bearing plates used with wood or metal materials shall be at least 4 inches square or the equivalent.

(4) Wooden materials that are used between a bearing plate and the mine roof in areas which will exist for three years or more shall be treated to minimize deterioration.

(d) When washers are used with roof bolts, the washers shall conform to the shape of the roof bolt head and bearing plate.

(e)(1) The diameter of finishing bits shall be within a tolerance of plus or minus 0.030 inch of the manufacturer's recommended hole diameter for the anchor used.

(2) When separate finishing bits are used, they shall be distinguishable from other bits.

(f) *Tensioned roof bolts.* (1) Roof bolts that provide support by creating a beam of laminated strata shall be at least 30 inches long. Roof bolts that provide support by suspending the roof from overlying stronger strata shall be long enough to anchor at least 12 inches into the stronger strata.

(2) Test holes, spaced at intervals specified in the roof control plan, shall be drilled to a depth of at least 12 inches above the anchorage horizon of mechanically anchored tensioned bolts being used. When a test hole indicates that bolts would not anchor in competent strata, corrective action shall be taken.

(3) The installed torque or tension ranges for roof bolts as specified in the roof control plan shall maintain the integrity of the support system and shall not exceed the yield point of the roof bolt nor anchorage capacity of the strata.

(4) In each roof bolting cycle, the actual torque or tension of the first tensioned roof bolt installed with each drill head shall be measured immediately after it is installed. Thereafter, for each drill head used, at least one roof bolt out of every four installed shall be measured for actual torque or tension. If the torque or

tension of any of the roof bolts measured is not within the range specified in the roof control plan, corrective action shall be taken.

(5) In working places from which coal is produced during any portion of a 24-hour period, the actual torque or tension on at least one out of every ten previously installed mechanically anchored tensioned roof bolts shall be measured from the outby corner of the last open crosscut to the face in each advancing section. Corrective action shall be taken if the majority of the bolts measured—

(i) Do not maintain at least 70 percent of the minimum torque or tension specified in the roof control plan, 50 percent if the roof bolt plates bear against wood; or

(ii) Have exceeded the maximum specified torque or tension by 50 percent.

(6) The mine operator or a person designated by the operator shall certify by signature and date that measurements required by paragraph (f)(5) of this section have been made. This certification shall be maintained for at least one year and shall be made available to an authorized representative of the Secretary and representatives of the miners.

(7) Tensioned roof bolts installed in the roof support pattern shall not be used to anchor trailing cables or used for any other purpose that could affect the tension of the bolt. Hanging trailing cables, line brattice, telephone lines, or other similar devices which do not place sudden loads on the bolts are permitted.

(8) Angle compensating devices shall be used to compensate for the angle when tensioned roof bolts are installed at angles greater than 5 degrees from the perpendicular to the bearing plate.

(g) *Non-tensioned grouted roof bolts.* The first non-tensioned grouted roof bolt installed during each roof bolting cycle shall be tested during or immediately after the first row of bolts has been installed. If the bolt tested does not withstand at least 150 foot-pounds of torque without rotating in the hole, corrective action shall be taken.

§ 75.205 Installation of roof support using mining machines with integral roof bolters.

When roof bolts are installed by a continuous mining machine with integral roof bolting equipment:

(a) The distance between roof bolts shall not exceed 10 feet crosswise.

(b) Roof bolts to be installed 9 feet or more apart shall be installed with a wooden crossbar at least 3 inches thick and 8 inches wide, or material which provides equivalent support.

(c) Roof bolts to be installed more than 8 feet but less than 9 feet apart shall be installed with a wooden plank at least 2 inches thick and 8 inches wide, or material which provides equivalent support.

§ 75.206 Conventional roof support.

(a) When conventional roof support materials are used as the only means of support—

(1) The width of any opening shall not exceed 20 feet;

(2) The spacing of roadway roof support shall not exceed 5 feet;

(3)(i) Supports shall be installed to within 5 feet of the uncut face;

(ii) When supports nearest the face must be removed to facilitate the operation of face equipment, equivalent temporary support shall be installed prior to removing the supports;

(4) Straight roadways shall not exceed 16 feet wide where full overhead support is used and 14 feet wide where only posts are used;

(5) Curved roadways shall not exceed 16 feet wide; and

(6) The roof at the entrance of all openings along travelways which are no longer needed for storing supplies or for travel of equipment shall be supported by extending the line of support across the opening.

(b) Conventional roof support materials shall meet the following specifications:

(1) The minimum diameter of cross-sectional area of wooden posts shall be as follows:

Post length (in inches)	Diameter of round posts (in inches)	Cross-sectional area of split posts (in square inches)
60 or less.....	4	13
Over 60 to 84.....	5	20
Over 84 to 108.....	6	28
Over 108 to 132.....	7	39
Over 132 to 156.....	8	50
Over 156 to 180.....	9	64
Over 180 to 204.....	10	79
Over 204 to 228.....	11	95
Over 228.....	12	113

(2) Wooden materials used for support shall have the following dimensions:

(i) Cap blocks and footings shall have flat sides and be at least 2 inches thick, 4 inches wide and 12 inches long.

(ii) Crossbars shall have a minimum cross-sectional area of 24 square inches and be at least 3 inches thick.

(iii) Planks shall be at least 6 inches wide and 1 inch thick.

(3) Cribbing materials shall have at least two parallel flat sides.

(c) A cluster of two or more posts that provide equivalent strength may be used to meet the requirements of paragraph (b)(1) of this section, except that no post shall have a diameter less than 4 inches or have a cross-sectional area less than 13 square inches.

(d) Materials other than wood used for support shall have support strength at least equivalent to wooden material meeting the applicable provisions of this section.

(e) Posts and jacks shall be tightly installed on solid footing.

(f) When posts are installed under roof susceptible to sloughing a cap block, plank, crossbar or materials that are equally effective shall be placed between the post and the roof.

(g) Blocks used for lagging between the roof and crossbars shall be spaced to distribute the load.

(h) Jacks used for roof support shall be used with at least 36 square inches of roof bearing surface.

§ 75.207 Pillar recovery.

Pillar recovery shall be conducted in the following manner, unless otherwise specified in the roof control plan:

(a) Full and partial pillar recovery shall not be conducted on the same pillar line, except where physical conditions such as unstable floor or roof, falls of roof, oil and gas well barriers or surface subsidence require that pillars be left in place.

(b) Before mining is started in a pillar split or lift—

(1) At least two rows of breaker posts or equivalent support shall be installed—

(i) As close to the initial intended breakline as practicable; and

(ii) Across each opening leading into an area where full or partial pillar extraction has been completed.

(2) A row of roadside-radius (turn) posts or equivalent support shall be installed leading into the split or lift.

(c) Before mining is started on a final stump—

(1) At least 2 rows of posts or equivalent support shall be installed on not more than 4-foot centers on each side of the roadway; and

(2) Only one open roadway, which shall not exceed 16 feet wide, shall lead from solid pillars to the final stump of a pillar. Where posts are used as the sole means of roof support, the width of the roadway shall not exceed 14 feet.

(d) During open-end pillar extraction, at least 2 rows of breaker posts or equivalent support shall be installed on not more than 4-foot centers. These supports shall be installed between the lift to be started and the area where pillars have been extracted. These

supports shall be maintained to within 7 feet of the face and the width of the roadway shall not exceed 16 feet. Where posts are used as the sole means of roof support, the width of the roadway shall not exceed 14 feet.

§ 75.208 Warning devices.

Except during the installation of roof supports, the end of permanent roof support shall be posted with a readily visible warning, or a physical barrier shall be installed to impede travel beyond permanent support.

§ 75.209 Automated Temporary Roof Support (ATRS) systems.

(a) Except in anthracite mines and as specified in paragraphs (b) and (c) of this section, an ATRS system shall be used with roof bolting machines and continuous-mining machines with integral roof bolters operated in a working section. The requirements of this paragraph shall be met according to the following schedule:

(1) All new machines ordered after March 28, 1988.

(2) All existing machines operated in mining heights of 36 inches or more after March 28, 1989; and

(3) All existing machines operated in mining heights of 30 inches or more but less than 36 inches after March 28, 1990.

(b) After March 28, 1990 the use of ATRS systems with existing roof bolting machines and continuous-mining machines with integral roof bolters operated in a working section where the mining height is less than 30 inches shall be addressed in the roof control plan.

(c) Alternative means of temporary support shall be used, as specified in the roof control plan, when—

(1) Mining conditions or circumstances prevent the use of an ATRS system; or

(2) Temporary supports are installed in conjunction with an ATRS system.

(d) Persons shall work or travel between the support device of the ATRS system and another support, and the distance between the support device of the ATRS system and support to the left, right or beyond the ATRS system, shall not exceed 5 feet.

(e) Each ATRS system shall meet each of the following:

(1) The ATRS system shall elastically support a deadweight load measured in pounds of at least 450 times each square foot of roof intended to be supported, but in no case less than 11,250 pounds.

(2) The controls that position and set the ATRS system shall be—

(i) Operable from under permanently supported roof; or

(ii) Located in a compartment, which includes a deck, that provides the

equipment operator with overhead and lateral protection, and has the structural capacity to elastically support a deadweight load of at least 18,000 pounds.

(3) All jacks affecting the capacity of the ATRS system and compartment shall have check valves or equivalent devices that will prevent rapid collapse in the event of a system failure.

(4) Except for the main tram controls, tram controls for positioning the equipment to set the ATRS system shall limit the speed of the equipment to a maximum of 80 feet-per-minute.

(f) The support capacity of each ATRS system and the structural capacity of each compartment shall be certified by a registered engineer as meeting the applicable requirements of paragraphs (e)(1) and (e)(2) of this section. The certifications shall be made available to an authorized representative of the Secretary and representative of the miners.

§ 75.210 Manual installation of temporary support.

(a) When manually installing temporary support, only persons engaged in installing the support shall proceed beyond permanent support.

(b) When manually installing temporary supports, the first temporary support shall be set no more than 5 feet from a permanent roof support and the rib. All temporary supports shall be set so that the person installing the supports remains between the temporary support being set and two other supports which shall be no more than 5 feet from the support being installed. Each temporary support shall be completely installed prior to installing the next temporary support.

(c) All temporary supports shall be placed on no more than 5-foot centers.

(d) Once temporary supports have been installed, work or travel beyond permanent roof support shall be done between temporary supports and the nearest permanent support or between other temporary supports.

§ 75.211 Roof testing and scaling.

(a) A visual examination of the roof, face and ribs shall be made immediately before any work is started in an area and thereafter as conditions warrant.

(b) Where the mining height permits and the visual examination does not disclose a hazardous condition, sound and vibration roof tests, or other equivalent tests, shall be made where supports are to be installed. When sound and vibration tests are made, they shall be conducted—

(1) After the ATRS system is set against the roof and before other support is installed; or

(2) Prior to manually installing a roof support. This test shall begin under supported roof and progress no further than the location where the next support is to be installed.

(c) When a hazardous roof, face, or rib condition is detected, the condition shall be corrected before there is any other work or travel in the affected area. If the affected area is left unattended, each entrance to the area shall be posted with a readily visible warning, or a physical barrier shall be installed to impede travel into the area.

(d) A bar for taking down loose material shall be available in the working place or on all face equipment except haulage equipment. Bars provided for taking down loose material shall be of a length and design that will allow the removal of loose material from a position that will not expose the person performing this work to injury from falling material.

§ 75.212 Rehabilitation of areas with unsupported roof.

(a) Before rehabilitating each area where a roof fall has occurred or the roof has been removed by mining machines or by blasting—

(1) The mine operator shall establish the clean up and support procedures that will be followed;

(2) All persons assigned to perform rehabilitation work shall be instructed in the clean-up and support procedures; and

(3) Ineffective, damaged or missing roof support at the edge of the area to be rehabilitated shall be replaced or other equivalent support installed.

(b) All persons who perform rehabilitation work shall be experienced in this work or they shall be supervised by a person experienced in rehabilitation work who is designated by the mine operator.

(c) Where work is not being performed to rehabilitate an area in active workings where a roof fall has occurred or the roof has been removed by mining machines or by blasting, each entrance to the area shall be supported by at least one row of posts on not more than 5-foot centers, or equally effective support.

§ 75.213 Roof support removal.

(a)(1) All persons who perform the work of removing permanent roof supports shall be experienced in this work, or they shall be supervised by a person experienced in removing roof supports who is designated by the mine operator.

(2) Only persons with at least one year of underground mining experience shall perform permanent roof support removal work.

(b) A person designated by the mine operator shall, prior to the removal of permanent roof supports, examine the roof conditions in the area where the supports are to be removed.

(c) Prior to the removal of crossbars, beams, or other similar supports, a row of temporary supports on not more than 5-foot centers or equivalent support shall be installed across the opening within 4 feet of the supports being removed. Additional supports shall be installed where necessary to assure safe removal.

(d)(1) Prior to the removal of roof bolts, temporary support shall be installed as close as practicable to each bolt being removed. After the removal of roof bolts, persons removing the temporary supports shall perform this work from a location under permanent supports which have not been disturbed.

(2) Roof bolts shall not be removed where full pillar extraction is conducted.

(e) Each entrance to an area where supports have been removed shall be posted with a readily visible warning or a physical barrier shall be installed to impede travel into the area.

(f) Except when supports are removed by persons who are in a remote location under supported roof, no permanent support shall be removed where—

(1) Roof bolt torque or tension measurements or the condition of conventional support indicate excessive loading;

(2) Roof fractures are present; or

(3) There is any other indication that the roof is structurally weak.

(g) Except for paragraph (b) of this section, the provisions of this section do not apply to removal of conventional supports for starting crosscuts and pillar splits or lifts.

§ 75.214 Supplemental support materials, equipment and tools.

(a) A supply of supplementary roof support materials and the tools and equipment necessary to install the materials shall be available at a readily accessible location on each working section or within four crosscuts of each working section.

(b) The quantity of support materials and tools and equipment maintained available in accordance with this section shall be sufficient to support the roof if adverse roof conditions are encountered, or in the event of an accident involving a fall.

§ 75.215 Longwall mining systems.

For each longwall mining section, the roof control plan shall specify—

(a) The methods that will be used to maintain a safe travelway out of the section through the tailgate side of the longwall; and

(b) The procedures that will be followed if a ground failure prevents travel out of the section through the tailgate side of the longwall.

§ 75.220 Roof control plan.

(a)(1) Each mine operator shall develop and follow a roof control plan, approved by the District Manager, that is suitable to the prevailing geological conditions, and the mining system to be used at the mine. Additional measures shall be taken to protect persons if unusual hazards are encountered.

(2) The proposed roof control plan and any revisions to the plan shall be submitted, in writing, to the District Manager. When revisions to a roof control plan are proposed, only the revised pages need to be submitted unless otherwise specified by the District Manager.

(b)(i) The mine operator will be notified in writing of the approval or denial of approval of a proposed roof control plan or proposed revision.

(2) When approval of a proposed plan or revision is denied, the deficiencies of the plan or revision and recommended changes will be specified and the mine operator will be afforded an opportunity to discuss the deficiencies and changes with the District Manager.

(3) Before new support materials, devices or systems other than roof bolts and accessories, are used as the only means of roof support, the District Manager may require that their effectiveness be demonstrated by experimental installations.

(c) No proposed roof control plan or revision to a roof control plan shall be implemented before it is approved.

(d) Before implementing an approved revision to a roof control plan, all persons who are affected by the revision shall be instructed in its provisions.

(e) The approved roof control plan and any revisions shall be available to the miners and representative of miners at the mine.

(f) Existing roof control plans that conflict with this Subpart C shall be revised to meet the requirements of this Subpart C by September 28, 1988. This paragraph (f) shall expire March 28, 1989.

(Approved by the Office of Management and Budget under control number 1219-0004)

§ 75.221 Roof control plan information.

(a) The following information shall be included in each roof control plan:

- (1) The name and address of the company.
- (2) The name, address, mine identification number and location of the mine.
- (3) The name and title of the company official responsible for the plan.
- (4) A typical columnar section of the mine strata which shall—
 - (i) Show the name and the thickness of the coalbed to be mined and any persistent partings;
 - (ii) Identify the type and show the thickness of each stratum up to and including the main roof above the coalbed and for distance of at least 10 feet below the coalbed; and
 - (iii) Indicate the maximum cover over the area to be mined.
- (5) A description and drawings of the sequence of installation and spacing of supports for each method of mining used.

(6) When an ATRS system is used, the maximum distance that an ATRS system is to be set beyond the last row of permanent support.

(7) When tunnel liners or arches are to be used for roof support, specifications and installation procedures for the liners or arches.

(8) Drawings indicating the planned width of openings, size of pillars, method or pillar recovery, and the sequence of mining pillars.

(9) A list of all support materials required to be used in the roof, face and rib control system, including, if roof bolts are to be installed—

- (i) The length, diameter, grade and type of anchorage unit to be used;
- (ii) The drill hole size to be used; and
- (iii) The installed torque or tension range for tensioned roof bolts.

(10) When mechanically anchored tensioned roof bolts are used, the intervals at which test holes will be drilled.

(11) A description of the method of protecting persons—

- (i) From falling material at drift openings; and
- (ii) When mining approaches within 150 feet of an outcrop.

(b) Each drawing submitted with a roof control plan shall contain a legend explaining all symbols used and shall specify the scale of the drawing which shall not be less than 5 feet to the inch or more than 20 feet to the inch.

(c) All roof control plan information, including drawings, shall be submitted on 8½ by 11 inch paper, or paper folded to this size.

(Approved by the Office of Management and Budget under control number 1219-0004)

§ 75.222 Roof control plan-approval criteria.

(a) This section sets forth the criteria that shall be considered on a mine-by-mine basis in the formulation and approval of roof control plans and revisions. Additional measures may be required in plans by the District Manager. Roof control plans that do not conform to the applicable criteria in this section may be approved by the District Manager, provided that effective control of the roof, face and ribs can be maintained.

(b) *Roof Bolting.* (1) Roof bolts should be installed on centers not exceeding 5 feet lengthwise and crosswise, except as specified in § 75.205.

(2) When tensioned roof bolts are used as a means of roof support, the torque or tension range should be capable of supporting roof bolt loads of at least 50 percent of either the yield point of the bolt or anchorage capacity of the strata, whichever is less.

(3) Any opening that is more than 20 feet wide should be supported by a combination of roof bolts and conventional supports.

(4) In any opening more than 20 feet wide—

(i) Posts should be installed to limit each roadway to 16 feet wide where straight and 18 feet wide where curved; and

(ii) A row of posts should be set for each 5 feet of space between the roadway posts and the ribs.

(5) Openings should not be more than 30 feet wide.

(c) *Installation of roof support using mining machines with integral roof bolters.* (1) Before an intersection or pillar split is started, roof bolts should be installed on at least 5-foot centers where the work is performed.

(2) Where the roof is supported by only two roof bolts crosswise, openings should not be more than 16 feet wide.

(d) *Pillar recovery.* (1) During development, any dimension of a pillar should be at least 20 feet.

(2) Pillar splits and lifts should not be more than 20 feet wide.

(3) Breaker posts should be installed on not more than 4-foot centers.

(4) Roadside-radius (turn) posts, or equivalent support, should be installed on not more than 4-foot centers leading into each pillar split or lift.

(5) Before full pillar recovery is started in areas where roof bolts are used as the only means of roof support and openings are more than 16 feet wide, at least one row of posts should be installed to limit the roadway width to 16 feet. These posts should be—

(i) Extended from the entrance to the split through the intersection outby the

pillar in which the split or lift is being made; and

(ii) Spaced on not more than 5-foot centers.

(e) *Unsupported openings at intersections.* Openings that create an intersection should be permanently supported or at least one row of temporary supports should be installed on not more than 5-foot centers across the opening before any other work or travel in the intersection.

(f) *ATRS systems in working sections where the mining height is below 30 inches.* In working sections where the mining height is below 30 inches, an ATRS system should be used to the extent practicable during the installation of roof bolts with roof bolting machines and continuous-mining machines with integral roof bolters.

(g) *Longwall mining systems.* (1) Systematic supplemental support should be installed throughout—

(i) The tailgate entry of the first longwall panel prior to any mining; and

(ii) In the proposed tailgate entry of each subsequent panel in advance of the frontal abutment stresses of the panel being mined.

(2) When a ground failure prevents travel out of the section through the tailgate side of the longwall section, the roof control plan should address—

(i) Notification of miners that the travelway is blocked;

(ii) Re-instruction of miners regarding escapeways and escape procedures in the event of an emergency;

(iii) Re-instruction of miners on the availability and use of self-contained self-rescue devices;

(iv) Monitoring and evaluation of the air entering the longwall section;

(v) Location and effectiveness of the two-way communication systems; and

(vi) A means of transportation from the section to the main line.

(3) The plan provisions addressed by paragraph (g)(2) of this section should remain in effect until a travelway is reestablished on the tailgate side of a longwall section.

§ 75.223 Evaluation and revision of roof control plan.

(a) Revisions of the roof control plan shall be proposed by the operator—

(1) When conditions indicate that the plan is not suitable for controlling the roof, face, ribs, or coal or rock bursts; or

(2) When accident and injury experience at the mine indicates the plan is inadequate. The accident and injury experience at each mine shall be reviewed at least every six months.

(b) Each unplanned roof fall and rib fall and coal or rock burst that occurs in

the active workings shall be plotted on a mine map if it—

- (1) Is above the anchorage zone where roof bolts are used;
- (2) Impairs ventilation;
- (3) Impedes passage of persons;
- (4) Causes miners to be withdrawn from the area affected; or

(5) Disrupts regular mining activities for more than one hour.

(c) The mine map of which roof falls are plotted shall be available at the mine site for inspection by authorized representatives of the Secretary and representatives of miners at the mine.

(d) The roof control plan for each mine shall be reviewed every six

months by an authorized representative of the Secretary. This review shall take into consideration any falls of the roof, face and ribs and the adequacy of the support systems used at the time.

(Approved by the Office of Management and Budget under control number 1219-0004)

[FR Doc. 88-1560 Filed 1-26-88; 8:45 am]

BILLING CODE 4510-43-M

29 CFR Part 75 Federal Register

Wednesday
January 27, 1988

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Underground Coal
Mine Ventilation; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Underground Coal Mine Ventilation

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Mine Safety and Health Administration's existing safety standards for ventilation of underground coal mines, for underground coal mine escapeways and for drilling of boreholes in advance of coal extraction underground. The proposed revisions would upgrade existing provisions consistent with advances in technology, eliminate unnecessary reporting and recordkeeping requirements, minimize conflicting provisions, delete irrelevant standards, simplify and consolidate existing standards, address known hazards not now covered by standards, and clarify and reorganize standards, where necessary.

DATES: Written comments must be submitted on or before March 28, 1988.

ADDRESSES: Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:**I. Background**

The Mine Safety and Health Administration is proposing a revision of its existing safety standards for ventilation of underground coal mines, escapeways, and boreholes in advance of mining. These revisions are proposed pursuant to section 101 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 811.

On November 19, 1985, MSHA published a notice in the *Federal Register* that announced the availability of a preproposal draft of the Agency's underground coal mine ventilation standards in 30 CFR Part 75. In response, MSHA has received written comments from all segments of the coal mining community. The Agency reviewed the comments and developed this proposed rule. The Agency's proposal addresses the comments received and is consistent with Executive Order 12291, the Regulatory

Flexibility Act and the Paperwork Reduction Act.

II. Discussion of Proposed Rule**A. General Discussion**

Underground coal mine ventilation affects various aspects of the safety and health of miners. Proper underground coal mine ventilation is necessary to protect against mine fires and explosions due, in part, to the presence of explosive gases in underground coal mines; oxygen-deficient atmospheres; accumulations of other harmful gases; and dust that could fuel a mine fire or propagate an explosion. Ventilation is also a primary method of controlling miners' exposure to respirable dust and preventing them from developing pneumoconiosis.

The proposed rule would clarify, reorganize, and update the existing ventilation standards that were promulgated more than 15 years ago. Miner safety and health would be improved by providing standards for and encouraging the use of advances in ventilation technology and by upgrading the quality of examinations for hazardous conditions that are conducted in all mines. In addition, irrelevant standards would be eliminated, and where appropriate, paperwork requirements and reporting burdens on the mine operator would be reduced.

The proposed rule would establish revised standards for ventilation that would be applicable to all underground coal mines, while retaining requirements for a ventilation plan for each mine. The ventilation plan would specify precautions and practices applicable to the particular conditions at the mine. The revisions proposed would convert some of the existing criteria used for the approval of ventilation plans into mandatory standards. As a result, ventilation plans would be simpler and only contain ventilation control measures needed to address unique conditions at a mine.

The proposal would retain the approach in existing standards and specify requirements for minimum air quantities in face areas, principally to control and dilute methane and respirable dust resulting from the mining process. Like the existing rules, the proposal would also include maximum permissible levels of methane that when reached would require action by the operator to eliminate the risk of explosion, and would be in addition to applicable respirable dust standards in existing 30 CFR Part 70. MSHA recognizes that this approach is somewhat redundant, in that it sets requirements for maximum levels of

methane and dust, and for the amount of air used to control these hazards. However, MSHA believes that this redundancy will ensure that face areas are adequately ventilated and that miners will work in safe and healthy environments. MSHA solicits comments on this approach and whether other more performance-oriented approaches, such as regulating only air quality, would also protect miners from ventilation hazards in face areas.

The proposal includes a new standard that would allow mine operators to use air coursing through a belt conveyor haulageway to ventilate a working place in the mine provided that specified safety precautions are followed. Presently, this practice is not permitted except through the petition for modification process. The Agency has reviewed these petitions and the proposal includes the safety precautions that, in MSHA's experience, are necessary to protect miners when belt air is used to ventilate a working place. This aspect of the proposal would also reduce paperwork burdens associated with the petition for modification procedure.

The proposed rule would clarify the scope of examinations for hazardous conditions, particularly the preshift examination that is conducted before the start of each shift. The proposal specifies that all areas of the mine where miners are scheduled to travel or work during the shift would need to be examined.

Another new provision would establish requirements for the use of atmospheric monitoring systems when they are used to monitor the mine atmosphere at specified locations for concentrations of methane and carbon monoxide, and for air velocity. Under the preproposal draft, an Atmospheric Monitoring System (AMS) would have been required in all mines having a certain threshold concentration of methane gas. Upon review of the comments, the Agency now believes that a particular threshold methane concentration may not be an appropriate basis for requiring atmospheric monitoring systems. This proposal generally provides for the voluntary use of such systems. However, to encourage the use of this emerging technology, the proposal would permit an AMS to be used as an alternative to certain evaluations required to be made by persons.

The proposal incorporates recommendations contained in the Agency's June 12, 1985 report, "Two-Entry Longwall Mining—A Technical Evaluation." This report was the result

of work completed by an MSHA task force, established on January 28, 1985, to study commonly employed practices and equipment used in longwall mining, and any effects of these practices and equipment on miner safety in a two-entry longwall system. The task force report contained 35 recommendations directed at safe operation of two-entry systems. Following release of the report, on July 18, 1985, the Mine Safety and Health Administration (MSHA) held a meeting in Denver, Colorado, to brief the public on the task force report. At that meeting and in subsequent response to the report, members of the mining community suggested that MSHA include the recommendations in the appropriate coal mine safety standards under review to afford the opportunity for comment through the rulemaking process. Consistent with these suggestions, the proposal includes task force recommendations related to ventilation that the Agency considers to be applicable to all mines. These include requirements for the construction and use of stoppings and other ventilation controls in all mines, and requirements for a passageway to be maintained through the tailgate entries of all longwall panels. Also related to longwall mining, the proposal would for the first time, specify a minimum air quantity reaching each working face.

The proposal would revise requirements for escapeways for underground coal mines in existing Subpart R and transfer these requirements to Subpart D. New provisions would generally require mines to have two escapeways ventilated with intake air to each working section, and would require at least one of the escapeways to be "smoke-free." A "smoke-free" intake escapeway would be one in which no permanent electrical equipment is present. This type of equipment can be a source of fire that could contaminate an escapeway, thus hindering escape.

The proposal would also revise requirements for drilling of boreholes in advance of mining, and establish procedures for mining into areas that have been penetrated by a borehole. Accidental mining into an abandoned or inaccessible area can cause disruption of ventilation and expose miners to hazards such as methane accumulations and oxygen deficient atmospheres.

B. Section-by-Section Discussion

Section 75.2 Definitions.

The proposal includes a new definition for "worked-out area" that would replace the current definition of abandoned areas. A worked-out area

would be an area where mining has been completed, whether pillared or nonpillared, and would exclude developing entries, return air courses, and intake air courses. This definition would include all areas within the existing definition of abandoned areas.

The proposal also contains a new definition for "permanent electrical equipment." All electrical equipment would be included within the definition, with specific exceptions. The exceptions would be for communication and monitoring systems, self-propelled electrical equipment, and electrical equipment that is only energized and operated while attended. The types of equipment that would be within the definition of permanent electrical equipment would include transformers, rectifiers, high-voltage switchgear, battery chargers, rotary converters, motor-generator sets, belt drives, compressors, and pumps. Under the proposal, ventilation standards addressing permanent electrical equipment are in § 75.340 (Underground electrical installations) and § 75.380 (Escapeways).

Other new definitions in the proposal are for "air course," "intake air," and "return air." An "air course" would be defined as a set of entries separated from other entries by ventilation control devices, such as stoppings, so that the mixture of air currents between each entry or set of entries is limited to the minimal leakage that naturally occurs through the ventilation controls. Two adjacent entries or adjacent sets of entries with an open crosscut or crosscuts between them would be considered separate air courses, for purposes of proposed § 75.364 (Weekly examination), if the distance between open crosscuts is greater than 300 feet in seam heights below 48 inches, and 600 feet in seam heights 48 inches or above.

The definitions of "intake air" and "return air" would recognize longstanding industry interpretations characterizing the nature of the air current by whether the air has ventilated a working place or mined-out area. Thus, intake air would be air coursed through a mine that has not yet ventilated the last working place on any split of any working section, or any worked-out area, whether pillared or non-pillared. Conversely, if the air has ventilated these areas, it would be considered return air. The definition of return air would also clarify that when intake air mixes in a return air course with air that has ventilated working places or worked-out areas, it would be considered return air.

Section 75.300 Mine ventilation.

The proposal would revise and clarify existing § 75.300. It would require all mines to be ventilated with one or more main mine fans. The existing standard requires mines to be ventilated with mechanical ventilation equipment, which, in all cases, are main mine fans.

The proposal would not permit the use of underground booster fans. This is consistent with MSHA's application of existing fan installation criteria, and recognizes longstanding industry practice. When underground booster fans are used, the ability of a mine to control recirculation of air after an explosion or similar emergency is substantially reduced. Also, under such circumstances it may not be possible to go underground to control the booster fan.

The proposal would also eliminate the requirement that mechanical ventilation equipment be installed and operated in a manner approved by the District Manager. Instead, those criteria in the existing standards for installation and operations of main mine fans which, in MSHA's experience, are applicable to all fans, would be converted to standards and are included in proposed §§ 75.310 and 75.311.

Commenters were concerned that certain existing fan installations would not comply with some of the requirements in proposed §§ 75.310 and 75.311. To address this concern alternative means of installation and operation are specified by the proposed rule. These provisions are discussed more fully in the explanations of §§ 75.310 and 75.311. Also, MSHA solicits additional comments on whether other equally safe alternative methods of installing fans not included in the proposal should be addressed in the final rule. Commenters should describe these methods for possible inclusion in the final rule. Comments are also requested on whether the final rule should permit equally effective methods of fan installation to be approved by the District Manager in the ventilation plan, rather than describing these methods in the final rule.

Section 75.310 Installation of main mine fans.

Main mine fans provide the means by which mechanically produced pressure is supplied to the mine ventilating current. This proposal for installation of main mine fans is derived primarily from the existing criteria in § 75.300-2 for the approval of main fan installation. Generally, the measures this proposal would require are aimed at protection of

main fans from fires and damage in the event of an underground explosion so that necessary ventilation can be maintained.

Paragraph (a) of the proposal sets out the basic requirements derived from the criteria in existing § 75.300 that MSHA considers to be applicable to the safe installation of all main mine fans. Since this proposal would convert these criteria to standards, the proposed requirements would not need to be specified in the ventilation plan for the mine, with the exception that operators permitted to shut down main mine fans in accordance with § 75.371(i) could propose the use of pressure measuring devices other than pressure recorders or main fan monitoring systems. To be approved as part of the mine's ventilation plan, an alternative pressure measuring device would have to be equally as effective at measuring fan pressure as a pressure recording device or fan monitor. As explained more fully in the discussion of § 75.371(i), this provision would provide a compliance alternative for small mines, many of which operate only one shift daily.

Under the proposal, each main mine fan would be required to be installed on the surface in a fireproof housing, be connected to the mine opening with a fireproof air duct, and be equipped with a device that gives a signal to a surface location when the fan slows or stops. To ensure that fans are not damaged or destroyed by the forces of an explosion underground, paragraph (a) would also require fans to be protected by one or more weak walls or explosion doors, or a combination of weak walls and explosion doors, and be offset so that the fan and its components are not in direct line with possible explosive forces. Also, this section would require monitoring and recording of mine ventilating pressure by the use of pressure recording devices, or by a main fan monitoring system. Only the use of pressure recording gages are addressed by existing criteria for ventilation plan approval. This proposal would reflect and encourage the use of improved technology for monitoring fan pressure.

The proposal retains, as mandatory standards, the existing ventilation plan approval criteria for fans driven by electric motors, and by internal combustion engines. The proposal would require that electric motors operate from a power circuit independent of all other mine power circuits. This enables main fans to continue operating and maintaining ventilation should underground electric power be interrupted. If the electric motor powering the fan is not

permissible, the motor would be required to be out of the air current exhausting from the mine. This would prevent the possibility of a potentially explosive mixture of methane in air from passing over a nonpermissible motor.

For fans driven by internal combustion engines, the proposal would require that the engine's fuel supply be protected against fires and explosions, that the engine be installed in a fireproof housing, and that the engine and engine-exhaust system be located out of direct line of the air current exhausting from the mine. The engine exhaust would also be required to be vented to the atmosphere so that the exhaust gases do not contaminate the mine intake air current or any enclosure. These provisions are retained from the existing approval criteria and are designed to minimize the potential for fires.

A proposed new requirement applicable to fans driven by internal combustion engines is that the engines be equipped with remote shut-down switches. Unlike an electric motor, which can be stopped by cutting electric power, an internal combustion engine will continue driving a fan as long as the fuel supply to the engine lasts. Thus, if the engine is inaccessible and cannot be remotely shut down in the event of a mine fire or similar emergency, the fan will continue to supply air to the fire.

The proposal specifies requirements for weak walls and explosion doors that would be required under paragraph (a) of this section for the protection of main mine fans from explosive forces originating from underground areas. Weak walls and explosion doors would be required to have a cross-sectional area at least equal to that of the entry through which the pressure from an explosion underground would be relieved. This would prevent explosive forces from being routed to and possibly damaging main fans. This proposal would permit the use of combinations of explosion doors and weak walls to protect main mine fans providing compliance flexibility and encouraging the use of the safest and most efficient methods of main fan protection at each mine.

Paragraphs (e) and (f) of the proposal establish requirements derived from existing ventilation plan approval criteria for specific main fan installation situations. Paragraph (e) addresses fans installed in line with a mine entry, a slope or a shaft, and provides that the cross-sectional area of the pressure-relief entry shall be at least equal to that of the fan entry, and that the fan entry shall be developed out of line with possible explosive forces. At least 2,500

square feet of coal or other solid material would be required to be between the pressure relief entry and the fan entry. Together, these precautions would protect fans from the forces of an explosion underground and would maximize the effectiveness of systems aimed at diverting explosive forces away from main mine fans.

Paragraph (f) would apply to mines ventilated by multiple main mine fans. It provides that fireproof doors shall be installed on the fans so that if any main fan stops and air reversal through the fan is possible, the doors on the affected fan will automatically close and prevent air reversal through the fan. This provision recognizes that pressure differentials are created when a main fan stops, particularly when others keep running, and that this can cause air to be diverted away from working areas in the mine. However, it also recognizes that in mines ventilated by blowing fans, and in some mines ventilated with combination exhaust and blowing fan systems, air reversals may not be possible. In such circumstances, automatic closing doors may not be needed or desired.

Commenters suggested that to avoid confusion reference in the preproposal to main mine fans as "surface mine fans" be eliminated. This proposal reflects those comments and retains the terminology of the existing ventilation plan approval criteria.

The proposal also clarifies that only one device for monitoring mine ventilating pressure is required and that a main fan monitoring system may be used to monitor fan pressure in lieu of the other devices. If a monitoring system is used, paragraph (c) of the proposal provides that the monitoring system must be capable of performing certain functions. These functions include recording mine ventilating pressure and giving a signal to a surface location at the mine when either a deficiency exists in the monitoring system or when there is a sudden increase or loss of mine ventilating pressure. Also, in order to provide an effective alternative to main mine fan examinations, which would be required daily under § 75.312 of the proposal, monitoring systems would be required to be capable of monitoring main mine fans and their associated components for proper operation. MSHA anticipates that this function would include monitoring bearing temperature, revolutions-per-minute, vibration, and perhaps voltage and current. The Agency solicits comments on the scope of the monitoring system function and whether the final rule should more specifically set out the requirements for

monitoring the fan and its associated components for proper operation.

In response to other comments, paragraph (a) of the proposal clarifies that all main mine fans must be equipped with an automatic device that signals a surface location when the main fan stops.

Commenters also recommended revision of the preproposal draft requirement that all main mine fans be offset so that the fan and its associated components are at least 15 feet from mine openings, or be protected by a slope, shaft, or diversion entry. A primary concern of the commenters was that fans installed and approved by MSHA as safe under existing criteria may, in some cases, not be offset by 15 feet due to the mountainous location of the mine opening, or other reasons. These commenters recommended that the installation requirement apply only to fans installed after the effective date of the final rule. After consideration of these comments, the proposal specifies that fan installations be offset so that the fan and its components are not in direct line with possible explosive forces. This approach provides a performance requirement for addressing the hazard of main mine fan damage or destruction due to an explosion in the mine, in light of the variety of mining conditions.

Section 75.311 Main mine fan operation.

This proposal is derived from existing ventilation plan approval criteria in §§ 75.300-2 and 75.300-3 and would establish requirements for main mine fan operation. It would require that fans be continuously operated to provide constant ventilation to underground areas, and specifies precautions for planned fan stoppages. The proposal also addresses the repair of main mine fans, monitoring of fan signal devices on the surface, and protection against fires around fan intake air openings.

The proposal would permit main mine fans to be stopped as specified in the ventilation plan for the mine, or when intentionally stopped for maintenance or adjustment of the fan. To minimize hazards to miners during these fan stoppages, the proposal specifies that if required ventilation is not maintained, only persons designated by the operator and authorized representatives of the Secretary may be permitted in the mine. Persons designated by the operator to be in the mine during a fan stoppage would be limited to those necessary to evaluate the effect of the fan stoppage or restart. The proposal also specifies that if the stoppage lasts for more than 30 minutes, electric power circuits

entering underground areas must be deenergized and other mechanized equipment must be shut off. This provision revises the draft requirement, which would have required electric power circuits to be deenergized immediately when the fan is stopped. The proposal to permit power circuits to be energized for up to 30 minutes after there is a planned stoppage provides flexibility during shorter stoppages.

Commenters suggested that atmospheric monitoring systems should be permitted to remain energized during planned fan stoppages so that the systems could continue to monitor the mine atmosphere. MSHA recognizes that monitoring during fan stoppages would provide safety benefits, but monitoring systems would have to be intrinsically safe to protect against an explosion should methane accumulate during the fan stoppage. Although this alternative has not been included in the proposal, the Agency solicits further comments on options related to intrinsically safe monitoring systems.

Paragraph (c) of the proposal would require prompt repair of any electrical or mechanical deficiency detected in a main mine fan. A deficiency in a main mine fan can result in inadequate ventilation of underground areas, thereby creating a hazard to miners.

Paragraph (d) would require that while any person is underground, a person designated by the operator be at a surface location where mine fan signal devices can be seen or heard. This would allow immediate warning to be provided to miners in the event of a fan malfunction or other hazard that may require miners to be withdrawn to the surface or other precautions to be taken. Signal devices would be those specified in § 75.310 (Installation of main mine fans) of this proposal.

Paragraph (e) of this proposal provides that there should be no accumulation of combustible and flammable material in the area surrounding each main mine fan and intake air opening. Liquid fuels and other flammable substances stored on the surface, as well as debris that may burn in the area of mine fans, present the hazard of a mine ventilation system becoming contaminated by smoke from a fire on the surface. Therefore, the proposal retains the draft requirement that this standard apply to the area within 100 feet of all surface fans and mine openings. The proposal adds a provision, however, that alternative protective measures may be described in the mine's ventilation plan. This change provides compliance flexibility and recognizes that other effective precautions may be taken to provide

protection from fire and products of combustion where a clear area of 100 feet is not available.

Section 75.312. Main mine fan examinations and records.

This proposal is derived from the existing § 75.300-4, which requires that main fans be inspected daily. Proper operation of main mine fans is critical to mine ventilation. Therefore, the proposal requires that surface mine fans and associated components, such as devices to monitor and record pressure, be examined at least once each day during which the fan operates. This daily examination would not be required if a main fan monitoring system is used. Instead, the proposal would require that the fan be examined and the monitoring system be tested at least every 7 days. If the monitoring system malfunctions, the mine fan and its associated components would then be required under the proposal to be examined at least once each day during which the fan operated until the problem is corrected.

The proposed interval between fan examinations if a main fan monitoring system is used is shorter than the 30-day examination period specified in the preproposal, reflecting comments that monthly examination would not provide sufficient verification that the fan is operating properly. The 7-day interval specified in the proposal is founded in the concept of a weekly examination of mine ventilation addressed in proposed § 73.364. MSHA requests comment on whether a weekly fan examination if a main fan monitoring system is used is an appropriate interval for verifying fan performance in this context, whether a longer interval would also ensure safe fan performance, or whether a requirement in the final rule that fans be maintained in proper operating condition would achieve the same purpose.

The proposal would require that circular recording charts for mine fan pressure recording devices be changed before completing one revolution. Commenters objected to this draft requirement, indicating that some charts may record fan pressure for up to a week before it is necessary that they be replaced. The commenters apparently believed one revolution to equal a day. MSHA agrees that charts designed to last more than a day should not be required to be changed daily, and the proposal should not necessarily require daily replacement of recording charts. If, for example, one revolution of a fan recording chart takes a week; the chart would only be required to be changed weekly. At this stage in rulemaking,

MSHA believes that it is necessary for charts to be changed in this manner in order for them to be readable and thereby provide useful information. When charts are used to provide a record of main fan operation, this proposal would require that they be maintained for at least one year at a surface location of the mine.

Paragraph (c) of the proposal is new and would require that at least every 30 days, each main fan be tested to determine that the automatic fan signal device is operating properly. The preproposal draft specified that each main fan be slowed and stopped during such testing. Several commenters, however, indicated that this would cause undue stress on main fans. Therefore, this proposal permits fans to remain in operation during signal testing. However, an option requiring fan stoppage during signal testing is still being considered since the Agency believes that the best test for a signal device may be to stop the fan, provided it does not excessively stress the fan. MSHA solicits further comment on this issue.

Paragraph (d) would require that at least every 30 days, automatic closing doors in multiple main mine fan systems be tested for proper operation. These doors must automatically close in the event of fan failure or stoppage in order to prevent an air reversal through the fan. Such a reversal could cause air to flow away from working areas.

The proposal would retain the existing requirement that a record of fan examinations be made. However, unlike the existing standard, which requires a record of the results of every inspection, the proposal would require a record of defects found during the examination that may affect the operation of the fan and which have not been corrected by the end of the shift on which the fan examination is made. All defects affecting safe fan operation would be required to be corrected.

A commenter stated that a requirement for recording of uncorrected fan defects implies that defects may exist in a fan as long as they are recorded. Proposed § 75.311, paragraph (c) would require that repairs be made promptly to correct a mechanical or electrical deficiency in a fan, whenever such a deficiency exists.

The proposal would also require the person performing the examination to certify by initials and date that an examination was made and note the main mine fan examined. The preproposal draft requirement that the time of the examination be recorded has not been retained since the purpose of the certification is to indicate only that

the fan has been examined during the shift.

The proposal provides that the certifications and records required by this section, including mine fan pressure recording charts, would be required to be retained for at least one year and to be made available to authorized representatives of the Secretary and representatives of miners.

One commenter recommended that the required certifications and records be required to be completed at the end of the examination, suggesting that this approach would give the oncoming shift access to the results of the examination prior to entering the mine. The examinations required by the proposal are intended to provide warning of and protection against main mine fan failures. At this stage in the rulemaking process, MSHA believes that completion of the certification and recordkeeping requirements at the end of the shift on which an examination is made is sufficient to verify proper fan operation. Therefore, the proposal does not specify that the results of fan examinations must be recorded at the end of the examination. The preshift examination required by § 75.360 (Preshift examination) of this proposal gives miners on the oncoming shift notice of hazards on working sections which could not be corrected and verification that proper ventilation is being maintained.

Section 75.313 Main mine fan stoppage with persons underground.

This proposal is derived from existing § 75.321 and sets forth safety precautions in the event of a main mine fan stoppage that interrupts ventilation while persons are underground. Unlike the existing standard, which requires mine operators to develop a plan for withdrawal of persons and deenergization of equipment, the proposal would establish standard procedures to be followed during a main fan stoppage. It would also require certain precautions when stoppages last longer than 15 minutes.

Paragraph (a) provides that if a main fan stops and required ventilation is not maintained, all electrically powered equipment in each working section must be deenergized. Deenergization of electrical equipment on working sections minimizes the possibility of an ignition source for accumulations of methane that can develop quickly when ventilation is interrupted. All other mechanized equipment not necessary for withdrawal of persons would be required to be shut off. This would include diesel and battery-operated equipment. This precaution would also

eliminate a potential ignition source, and would avoid the accumulation of diesel exhaust contaminants while mine air-flow is interrupted.

Paragraph (a) also would require that all persons be withdrawn from working places when ventilation is interrupted by a main mine fan stoppage. Working places where coal is being extracted are typically the areas of an underground mine where methane accumulation, oxygen deficiency, and other hazards to health or safety can develop quickly when ventilation is interrupted. To avoid exposure of miners to these hazards, timely withdrawal of persons is an important safety practice.

Paragraph (b) of this proposal provides that when required ventilation is restored within 15 minutes, work may resume, provided that certified persons first examine for the presence of methane in all working places and in areas where methane will accumulate. A thorough examination is necessary so that methane ignitions do not occur when mining activity resumes. Diesel and electrically-powered equipment could be used in such areas only after certified persons have made examinations for methane in those areas.

When normal mine ventilation is not restored within 15 minutes after a main mine fan stops, paragraph (c) of the proposal, also derived from the existing § 75.321, would require that miners be withdrawn from the mine and that all electric power circuits be deenergized, except those necessary to withdraw persons from the mine which are located in areas where air reversals are not likely to occur. Air reversals can pull methane and other gases from worked-out areas, increasing the risk of ignition or explosion where electric power circuits are energized. Circuits permitted to remain energized for withdrawal of persons would be required to be deenergized in an orderly fashion as persons are withdrawn. This proposal would eliminate the existing requirement that deenergization of power circuits as persons withdraw be performed as specified in the mine's approved ventilation plan. The proposal would also require that mechanized equipment not on the working section be shut off. However, like electric circuits, mechanized equipment necessary to withdraw persons may remain in operation, if the equipment is located where air reversals are not likely to occur.

When ventilation is restored, and before electric power circuits are energized in any area, the proposal would require certified persons to

examine for methane. This examination would address the hazard of power being restored when methane is present, which could result in an ignition. The proposal would also require that a certified person examine underground areas and determine them to be safe before miners and permitted to return. This examination would include tests for methane and oxygen deficiency, and verification that ventilation has been restored to required levels, protecting miners from hazards that can develop in working places while ventilation is interrupted.

If ventilation is restored to the mine while miners are being withdrawn, but before they reach the surface, the proposal provides that the miners may return to underground areas that have been evacuated after an examination by a certified person is made. This proposal provides protection to the miners from underground hazards resulting from sudden fan stoppage and recognizes that in some cases travel to the surface can last for up to an hour, perhaps longer. If ventilation is restored to the mine during this period no additional safety benefit is derived from having all miners go to the surface before they can return to working places, as long as their working places are examined and determined to be safe before they return.

Section 75.320 Air quality detectors and air measurement devices.

This proposal would revise and consolidate existing standards in §§ 75.303, 75.305-2, 75.307-1, 75.308-2, 75.309-1, 7.310-2, 74.311-1, 75.312-2, 75.314-1, 75.315-1, and 75.317. It would establish requirements for devices used to make tests or measurements required to be made under this proposed rule, including tests for methane, oxygen deficiency, and air velocity.

Electric components of methane detectors and other devices can be an ignition source for methane and other explosive gases. Therefore, the proposal retains the existing requirement that methane detectors be approved by MSHA and maintained in permissible and proper operating condition. MSHA believes that maintaining these devices in permissible and proper operating condition requires routine calibration with known methane-air mixtures. Under the preproposal, calibration at 30 day intervals was specified. The proposal does not retain this approach because the interval necessary to ensure that detectors are properly calibrated may vary between instruments. Instead, operators would be required to calibrate their instruments with sufficient frequency to maintain them in a properly calibrated condition at all

times that they are available for use underground. MSHA solicits comments on the proposed approach, and whether the proposal or a specific interval for calibration in the final rule would more adequately ensure that detectors are maintained in permissible and proper operating condition. Interested commenters should also address the need for a specific calibration interval to the proposed rules for methane monitors (§ 75.342) and for fire detection and monitoring systems (§ 75.350 and § 75.351). As with methane monitors, the preproposal specified 30-day calibration intervals for each of these devices, while the proposal adopts the approach that these devices be maintained in permissible and proper operating condition.

The proposal would require that tests for oxygen deficiency be made with MSHA-approved oxygen detectors and that such devices be maintained in permissible and proper operating condition. The proposal would also require that devices that contain electrical components and that are used to measure air velocity be approved by MSHA and be maintained in permissible and proper operating condition.

Paragraph (d) of the proposal is new and would apply to devices that contain electrical components such as those used to measure carbon monoxide, oxides of nitrogen, and other harmful gases. Like methane detectors and other electrically operated devices, this equipment must be approved, maintained in permissible and proper operating condition. Also, like methane detectors, MSHA believes that maintaining these detectors in permissible and proper operating condition includes routine calibration with known concentrations of the applicable gas, and solicits comments on whether a calibration interval should be included in the final rule.

This proposal retains the word "permissible" to describe devices such as methane detectors that are safe to use in a potentially explosive atmosphere. At this stage in rulemaking, however, MSHA is considering a nomenclature change that would substitute the word "approved" in all sections of this proposal where the word "permissible" appears. This would be consistent with the requirement that devices with electrical components be approved as permissible under Part 18 of this chapter.

Paragraph (e) of the proposal is new and would prohibit the use of flame safety lamps. Under existing standards, these devices are used to detect oxygen-deficient atmospheres, and as a

supplementary device for detecting methane. MSHA experience has been that oxygen and methane cannot be accurately measured with flame safety lamps, particularly at levels of 19.5 percent for oxygen and 1.0 percent for methane. Also, improper assembly of flame safety lamps can create ignition and explosion hazards in mines.

Section 75.321 Air quality.

This proposal is derived from existing §§ 75.301 and 75.301-5, and would delete existing §§ 75.301-6, 75.301-7 and 75.301-8. It would establish a basic air quality requirement that all areas where persons work or travel in an underground mine be ventilated by air that contains at least 19.5 percent oxygen and not more than 0.5 percent carbon dioxide. In most workplaces, air normally contains about 20.9 percent oxygen and .03 percent carbon dioxide. Levels below 19.5 percent oxygen and above 0.5 percent carbon dioxide indicate that an air quality problem exists that warrants attention. The proposed levels reflect this consideration and are generally recognized as appropriate for underground coal mines.

Paragraph (b) of the proposal, which is derived from existing § 75.301-5, would establish levels for explosive gases, other than methane. Gases which can present explosive hazards in mines include hydrogen, hydrogen sulfide, and ethane. Like existing § 75.301-5, the concentrations specified for these gases are based upon the lower explosive limit of the listed gases. This limit is the point at which the gas will propagate and maintain an explosion. Similar to the 1.0 percent action level for methane used in § 75.323 (Actions for excessive methane) of this proposed rule, the maximum concentrations this proposal would establish are 20% of the lower explosive limit of the indicated gases. Accordingly, the proposal retains the maximum allowable concentrations for hydrogen (.80 percent) and hydrogen sulfide (.80 percent).

Unlike the existing standard, this proposal would not specify maximum concentrations for propane, acetylene, or methyl acetylene-propylene-propadiene (MAPP). MSHA's experience has been that these gases are found very rarely in natural deposits in underground coal mines. However, these gases are found in compressed gas cylinders used underground. The transportation, handling, and storage of the gases in this form is generally governed by other MSHA and federal safety standards.

The proposal would also delete the existing maximum concentration for carbon monoxide. Under the proposal, carbon monoxide concentrations would be monitored for early warning of fire in such places as belt conveyor entries. Also, the proposal would not affect the existing health exposure standard for carbon monoxide, which is considerably lower than a maximum concentration based on the explosive range of the gas.

The proposal would add a maximum permissible concentration for ethane. This gas is found in underground coal mines, particularly near oil and gas wells, and is produced by mine fires. Like the other gases listed in paragraph (b) of the proposal, the maximum concentration (.60 percent) for ethane is also 20% of the lower explosive limit for the gas. MSHA also specifically requests comment on whether other explosive gases should be addressed in the standard.

Existing §§ 75.301-6, 75.307-7, which would be deleted by this proposal, generally specify actions to be taken by MSHA regarding sampling for explosive gases, other than methane, and the enforcement and abatement procedures to be applied in the event gas accumulations exceed the standards. As indicated in the preproposal draft, MSHA considers these existing standards to be unnecessary. The enforcement and abatement procedures for violations of standards are delineated in the Mine Act. Standards specifying MSHA-conducted sampling programs unnecessarily inhibit refinement and improvement in the administration of the Agency's responsibility.

Existing section 75.301-8 would also be deleted by this proposal. The current requirements specify measures an operator must take to control concentrations of explosive gases known by the operator to exist in the mine. This proposal, however, would establish limits for explosive gases and allow operators to develop the method of maintaining compliance with these limits.

The proposed rule would not affect the existing standard for harmful quantities of noxious gases in § 75.301-2. The existing rule, like the preproposal draft, includes an incorporation by reference of the threshold limit values (TLV's) adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) for harmful, noxious and poisonous gases. On reconsideration of the preproposal, however, MSHA believes that standards for exposure to harmful, noxious or poisonous gases would be more appropriately addressed in the Agency's

health standards. Accordingly, MSHA will undertake a separate rulemaking that would revise 30 CFR Part 70 to address this issue. Appropriate TLV's will be included in that proposal to address hazards at underground coal mines. In the interim, existing § 75.301-2 would be retained. MSHA solicits comments on whether the requirements in this proposal for oxygen and carbon dioxide would also be more appropriate for inclusion in Part 70, or should be retained in the ventilation standards.

Section 75.323 Actions for excessive methane.

This proposal revises and consolidates existing §§ 75.307, 75.308, 75.309, 75.310, and parts of §§ 75.316 and 75.326. It would establish action levels for methane concentrations detected in certain areas of the mine, when tests for methane are made at least 12 inches away from the roof, face, ribs, and floor. The lowest methane action levels are for those areas where methane accumulations are most likely to immediately endanger miners. This proposal also retains the requirement of progressive precautions based on the methane accumulations encountered.

When 1.0 percent of methane is present in a working place, paragraph (b) of the proposal would require that all electrically-powered equipment in the affected working place be deenergized. Removing power to electrical equipment in these areas prevents the equipment from providing ignition sources, such as sparks caused by contact of moving parts with mine surfaces. Other mechanized equipment, including diesel and battery-powered equipment, is also a potential source of ignitions, and therefore, this proposal would also require that this equipment be shut off when 1.0 percent methane is present. Before any equipment may be put back into operation, this proposal would require changes or adjustments to be made in ventilation or in the section mining cycle to reduce the methane concentration in air to within safe levels.

For the first time, the proposal would specify that actions be taken to protect miners when 1.0 percent methane is present in an intake air course. These actions would be the same as those described under paragraph (b). Under the preproposal, changes or adjustments in ventilation would have been required when 0.25 percent of methane was present in a designated escapeway ventilated with intake air, a track haulageway, or in an intake air course. Comments were received from many segments of the mining industry objecting to this provision. Some

commenters indicated that 0.25 percent of methane is not a significant concentration in a coal mine. One commenter stated that in some cases this concentration could be found where coal is being transported on a belt conveyor. Commenters generally indicated that it would be difficult or even impossible for most mines to comply with this draft requirement, and recommended that this action level be deleted in favor of the existing action level of 1.0 percent for working places and belt haulageways. These commenters suggested that the existing level requires operators to institute effective and practical methane controls in intake air courses on a mine-by-mine basis, as appropriate.

After consideration of these comments, MSHA agrees with the commenters that 0.25 percent is not an indication of hazardous concentrations of methane in intake air. However, MSHA does not believe that the 1.0 percent methane limit for working places and belt haulageways will always serve to maintain low levels of methane in intake air in all mines. Nonpermissible equipment, which can be operated away from face areas, could cause an explosion should methane concentrations reach explosive levels in intake entries. To avoid this hazard and to help ensure that low levels of methane are maintained in face areas, the proposal would require that methane concentrations not exceed 1.0 percent in intake air courses. MSHA does not believe that this new requirement would increase costs for operators, but requests comments on whether, in fact, operating costs would be increased by this provision.

Under the proposal, intake air courses would include air courses in which belt conveyors are located. As discussed more fully regarding proposed § 75.352 (Return air courses), air that has ventilated a working face generally may not be coursed through belt entries. Therefore, intake air would generally be used in belt entries, regardless of whether the intake air will also be used to ventilate working places in accordance with proposed § 75.351 (Belt conveyor entries). As with all intake air courses the same precautions regarding methane concentrations would thus be required by paragraph (b) when 1.0 percent methane is present in an air course in which a belt conveyor is located. Derived from existing § 75.326, this provision is aimed at protecting miners from methane ignitions caused by sparks or other ignition sources created by belt conveyors and electrical equipment in belt entries. This provision

would also minimize the risk of float coal dust explosions in belt entries, which can occur in atmospheres containing lower levels of methane.

Should 1.5 percent methane be present in a working place or an intake air course, including an air course in which a belt conveyor is located, paragraph (c) additionally would require persons to be withdrawn from the affected area. This requirement is retained from the existing standards. Only persons designated by the operator to take corrective action and authorized representatives of the Secretary would be permitted to remain in the area. Paragraph (c) would also require that all electric power to equipment in affected areas be disconnected at the power source. This prevents accidental reenergization of equipment, and removes power from cables and circuits which may also be ignition sources. Before work can be resumed, changes or adjustments in ventilation would be required to reduce the concentration of methane in air to less than 1.0 percent.

The preproposal draft used the phrase "including where longwall or shortwall mining is used" to indicate that working places would include areas where these mining techniques are used. After reconsideration, however, the proposal does not include this phrase since the term "working place" includes shortwall and longwall mining sections.

Paragraph (d) of this proposal would require the same precautions as in paragraph (b), specifying that mining equipment be shut off or deenergized, and changes or adjustments be made in ventilation when 1.5 percent of methane is present in a return split of air between the last working place on a working section and where that split of air meets another split of air. These measures would also be required when a split of air returning from a working section is used to ventilate seals or worked-out areas. When 2.0 percent of methane is present at these locations, paragraph (e), like paragraph (c), would require miners to be withdrawn, disconnection of electric equipment at the power source, and changes or adjustment in ventilation to reduce the concentration of methane in return air to less than 1.5 percent.

If 2.0 percent of methane is present in a bleeder split of air just before the air in that split enters another split of air, or if 2.0 percent of methane is present in a return air course other than a return air course described in paragraph (c), changes or adjustments in ventilation would be required to reduce the concentration of methane to less than 2.0 percent at these locations. Generally, a return air course other than as

described in paragraph (c) would be in a main return.

Commenters objected to the draft requirement proposing the 1.5 percent methane action level for splits of air returning from working sections. The commenters indicated that the requirements of existing § 75.309 should be retained. This standard specifies that when 1.0 percent methane is encountered in a return air split, changes or adjustment in ventilation must be made to reduce the methane concentration to below 1.0 percent. Also, equipment must be deenergized and people must be withdrawn from the area when the level reached 1.5 percent.

The proposal, like the existing standard, would also require electric equipment to be deenergized when 1.5 percent methane is found in a return air split, and all other mechanized equipment would be required to be shut off. Also, under the proposal, changes or adjustments in ventilation would be required at the 1.5 percent level, and miners would be withdrawn at 2.0 percent. At this stage in rulemaking, MSHA feels that retaining the existing requirements for deenergizing equipment will remove the potential for a methane ignition when 1.5 percent methane is reached, and that allowing changes or adjustments to begin at 1.5 percent and miners to be withdrawn at 2.0 percent will not present a greater risk to miners when methane from the face is liberated into a return, where methane levels are ordinarily higher than in face areas. Also, the Agency feels that the new requirement that methane be maintained below 1.0 percent in intake air courses will contribute significantly to the protection of miners from methane hazards in all areas of a mine.

The commenter's objection to the draft requirement also appeared related to existing § 75.310, which requires precautions to be taken to maintain methane levels in return air to below 2.0 percent when mining is conducted in new or virgin territories of a mine. However, the proposal does not distinguish between virgin and non-virgin territories. Therefore, methane levels for return air in all areas of a mine would be required to be maintained at less than 1.5 percent.

Section 75.324 Intentional changes in the ventilation system.

This proposal would revise existing § 75.322. Under the proposal certain precautions would be required when a change is made increasing or decreasing ventilation on a working section by at least 9,000 cubic-feet-per-minute, or when a ventilation change materially

affects the main air current of the mine or any split thereof. Under these circumstances, the ventilation change must be supervised by a person designated by the operator and made only after electric power has been removed from areas that may be affected by the change, and mechanized equipment in those areas is shut off. Only persons making the ventilation change would be permitted in the mine while the change is being made. Afterwards, certified persons would be required to examine the areas affected by the change to determine its effect on the mine ventilation system and whether any hazardous conditions are present. Specifically, tests for methane accumulation and for oxygen deficiency would be required. Electric power would not be permitted to be restored to affected areas, and mechanized equipment would not be permitted to be restarted until these tests are made and the areas are determined to be safe.

The application of the proposed standard to increases or decreases in section ventilation of 9,000 cubic-feet-per-minute (cfm) or more is responsive to comments. Some commenters expressed concern that the preproposal draft, which described only ventilation changes "that may affect the safety or health of persons," was vague. Many requested further clarification, and more than one commenter suggested that the current ventilation plan approval guideline of 9,000 cfm (§ 75.322) be incorporated into the proposal. In light of these comments and based on MSHA's belief that a ventilation change of 9,000 cfm is significant for any working section, the proposal sets a threshold of 9,000 cfm for ventilation changes on working sections requiring deenergization, withdrawal of persons from the affected areas, and subsequent examination for hazards.

The proposal also recognizes that in some large mines a ventilation change of 9,000 cfm in the main air current of the mine would not necessarily be significant. Alternatively, in other mines, changes of 9,000 cfm or less in the main air current could substantially affect mine ventilation. Accordingly, the proposal would not apply this guideline to main air currents, or to splits of main air currents. Instead, the proposal specifies that the prescribed precautions be taken when the ventilation change is one "that materially affects the main air current or any split thereof." This phrase is derived from the existing standard, which states that "[c]hanges in ventilation which materially affect the main air current or any split thereof and which may affect the safety of persons

in the coal mine shall be made only when the mine is idle."

Section 75.325 Air quantity.

This proposal is derived from existing §§ 75.301, 75.301-1, and 75.301-3. The proposal would establish minimum air quantity requirements for all coal mines.

Quantity of air, measured in cubic-feet-per-minute (cfm), is an important measure of underground coal mine ventilation. The quantity, or amount of air delivered to each working face is relied upon to dilute, render harmless, and carry away flammable and harmful dusts and gases produced during mining. An insufficient quantity of air at a working face could permit methane to accumulate and lead to the development of other hazards.

The proposal retains the existing requirement that a minimum air quantity of at least 3,000 cfm reach each working face in bituminous and lignite mines where coal is being cut, mined, drilled for blasting, or loaded. Maintaining this minimum quantity of air at the face is an accepted industry practice and is considered to be the minimum amount necessary for all mines so that effective, reliable face ventilation can be provided. Lesser quantities of air at the face have been shown to be inadequate to sweep face areas, thereby allowing methane to accumulate to dangerous levels. Therefore, since methane can be liberated at any time, even in a mine with little prior experience with methane liberation, the 3,000 cfm standard is retained in the proposal as a minimum air quantity.

Where mining conditions dictate that a greater quantity of air is necessary at the face, the proposal specifies that a greater quantity of air would be required in the ventilation plan. MSHA and Bureau of Mines studies of face ventilation systems demonstrate that the effectiveness of the face ventilation system is dependent on factors which include the volume of methane released and the volume of air delivered to the face by the ventilation system. See, e.g., "Face Ventilation in Underground Bituminous Coal Mines: Airflow and Methane Distribution Patterns in Immediate Face Area-Line Brattice" (James V. Luxner; 1969) and "Evaluation of Face Ventilation Systems in Underground Coal Mines" (Haney, Banfield, and Gigliotti; 1984). Thus, in mines where methane liberation is high, a quantity of air greater than 3,000 cfm may be necessary to reduce the potential for methane ignition at the face.

To determine that the required air quantity is reaching the working face, the proposal retains the existing

requirement that the air quantity reaching the face be measured at the face end of the line curtain or ventilation tubing. The proposal also recognizes, however, the danger to miners of measuring the quantity beyond the last row of permanent supports. Therefore, the proposal would require that when the curtain or tubing extends beyond the last permanent support, the quantity of air reaching the working face is to be measured behind the line curtain or in the ventilation tubing at the last row of permanent supports.

After reviewing comments on the preproposal, MSHA believes that in bituminous and lignite mines the existing minimum air quantity requirements of 9,000 cubic-feet-per-minute reaching the last open crosscut in any pair or set of developing entries or rooms and reaching the intake end of a pillar line may not be sufficiently reflective of the variation among coal mines. At this stage in rulemaking, MSHA believes that a more appropriate measure of ventilation for these areas may be specific air volume and velocity requirements in the mine's ventilation plan, in accordance with § 75.371 (Mine ventilation plan) of this proposed rule. This approach, which is discussed in the explanation of proposed § 75.371, would allow the volume of air necessary to deliver specific quantities to the working face to vary according to mining conditions and the type of face ventilation system.

A proposed new requirement that would apply to longwall mining systems is that the quantity of air be at least 20,000 cubic-feet-per-minute reaching each working longwall face. A survey of MSHA Districts indicated that nearly all existing longwall sections are required, through ventilation plans, to have 20,000 cfm or more of air at the intake side of the face. At least this amount of air is therefore considered necessary in all mines in order to achieve adequate ventilation across the entire longwall face. When conditions warrant, the proposal indicates that a greater quantity would be required to be specified in the ventilation plan. To determine that the required air quantity is reaching the working face, the proposal would require that the quantity be measured in the intake entry or entries at the intake end of the longwall face immediately outby the face. The Agency solicits comments on the proposed minimum air quantity for longwalls and whether another minimum quantity would better achieve proper longwall ventilation.

The proposal separately addresses anthracite mines and would require the

minimum quantity of air to be 1,500 cubic-feet-per-minute reaching each working face where anthracite coal is being mined. The existing standard requires 3,000 cubic-feet-per-minute of air in these areas. The proposal would also reduce from 9,000 to 5,000 cubic-feet-per-minute the air quantity required to pass through the last open crosscut in each set of entries or rooms and the air quantity required at the intake end of any pillar line. These changes reflect Agency experience with respect to petitions for modification. The proposal retains the existing requirement that in robbing areas where air measurements cannot be obtained, the air must have perceptible movement.

Paragraph (a) of this proposal is new and is based on preproposal draft § 75.331 (Machine mounted dust collector fans). The section was added to this proposal since it is actually an air quantity requirement. The term "rated capacity" in this paragraph was changed to "operating volume" in response to comments that indicated that the "rated capacity" of a dust collector may not be the best measure of performance in actual mining situations. Additionally, the term "machine-mounted dust collector fans" was changed to "machine-mounted dust collectors" since not all such units are fans. The provision would also address diffuser fans, and would permit quantities other than the operating volume of dust collectors and diffusers to be specified in the ventilation plan.

Section 75.326 Mean entry air velocity.

The proposal is derived from the existing § 75.301-4 and retains the requirement that a minimum mean entry air velocity of 60-feet-per-minute be maintained in all working places utilizing exhausting face ventilation systems. MSHA's experience is that although dust compliance may be possible with a lesser velocity, a minimum mean entry velocity of 60 fpm will maintain the average concentration of respirable dust in face areas to within 2.0 mg/m³ of air, assuming 1.0 mg/m³ of respirable dust in intake air, as required by existing § 75.100(b), and the use of face ventilation controls to within 10 feet of the face. To provide compliance flexibility, the proposal would permit lower mean entry air velocities to be specified in the ventilation plan as long as the lower velocities will maintain concentrations of respirable dust to within the applicable dust standard of 2.0 mg/m³. The proposal would not retain the instructions in existing § 75.301-4 for calculating the mean entry air velocity. By eliminating this

provision, the proposal permits the direct measurement of the mean entry air velocity, whenever such measurement is possible.

Section 75.327 Trolley haulageways used as intake air courses.

This proposal would revise existing §§ 75.327 and 75.327-1. It would apply to intake air courses where trolley wires or trolley feeder wires are installed, and specifies an air velocity in these entries of at least 50 feet per minute (fpm).

The proposed minimum air velocity requirement would provide a sufficient amount of air to dilute methane and to provide an adequate supply of oxygen. Unlike the existing standard, however, this proposal does not specify a maximum velocity of air for trolley haulage entries. The current standard, which applies to trolley haulageways in mines and working sections developed after March 30, 1970, requires that the air current not exceed 250 feet-per-minute, unless a greater velocity is approved by the District Manager. This standard was designed to minimize hazards associated with fires and dust explosions in the haulageways. The reason for the standard's "grandfather" provision for mines operated before March 30, 1970, is that in these mines the main intake for a working section often serves as a trolley haulageway. March 30, 1970 is the effective date of the existing standard.

MSHA's experience under the existing standard has been that a greater velocity of air in trolley haulage entries can provide safety benefits to miners in these entries and in face areas by reducing methane content and increasing oxygen supplies. Commenters on the preproposal, which specified a 300 fpm air velocity in trolley haulageways, indicated that limiting air velocity in trolley haulage entries can restrict the capability of a mine's ventilation system to dilute and carry away explosive mixtures of methane and harmful concentrations of contaminants from working places and other areas.

After consideration of these comments, MSHA agrees that limiting air velocities in trolley haulage entries unnecessarily restricts the ability of a mine's ventilation system to perform its functions. The Agency believes that restricting air velocities in these entries leads in some cases to pressure imbalances between entries, methane layering, and other ventilation problems. Therefore, at this stage in rulemaking, the 300 fpm air velocity limitation in the preproposal draft is not included in the proposal. Under the proposal, operators would be permitted to use velocities

greater than 50 feet per minute that are necessary to deliver adequate ventilation to face areas.

Section 75.300 Face ventilation control devices.

This proposal would consolidate and modify existing §§ 75.302 through 75.302-3. It would require that brattice cloth, ventilation tubing, and other face ventilation control devices be made of flame-resistant material approved by the Secretary, and that such face ventilation control devices be used from the last open crosscut to each working face from which coal is being cut, mined or loaded. Also, to provide ventilation to working places as necessary where other activities such as roof bolting are being conducted, the proposal would require ventilation control devices to be used at other locations specified in the ventilation plan.

Paragraph (b) is derived from existing § 75.302-1, which requires the installation of line brattice to within 10 feet of the area of deepest penetration at the face, unless an alternative distance is approved by the District Manager. MSHA's experience under this provision has been that ventilation controls used more than 10 feet back from the face are often adequate to control methane and dust. This practice also helps to avoid damage to or displacement of controls during the mining process and eliminates the potential exposure of miners to unsupported roof. In line with these considerations, the proposal would delete the 10-foot requirement and instead would require ventilation control devices to be used at a distance from the fact that is specified in the ventilation plan. The distance specified would be required to be that which will maintain concentrations of respirable dust, methane, and other harmful gases below the applicable standards. This approach would permit flexibility in determining how far to extend line brattice and ventilation tubing based on the conditions at each mine.

Under the proposed approach, distances greater than 10 feet could be specified in the mine's ventilation plan if they are adequate to provide ventilation to the working face. Alternatively, if a distance less than 10 feet is required based on mining conditions, this distance would also be included in the plan.

One commenter indicated that without the "10-foot requirement," respirable dust concentrations and methane accumulations in face areas would increase dangerously. This commenter recommended that extensible line curtain and other devices be required for advancing ventilation

controls to within 10 feet of the face to avoid exposure of miners to roof fall hazards. MSHA agrees that extensible ventilation controls can be effective for advancing line curtain and other controls. However, for the reasons discussed above, the Agency believes at this point in the rulemaking that the distance from the face at which controls are set should be based on the conditions at the mine, but requests further comments on the ten-foot requirement, and specifically whether distances should be addressed on a mine-by-mine basis in the ventilation plan.

Section 75.331 Auxillary fans and tubing.

This proposal is derived from and clarifies existing § 75.302-4. The proposal retains the requirement of the existing standard that auxiliary fans be permissible, and would require that fans be maintained in proper operating condition. The existing provision which requires fans to be inspected frequently by a certified person when in use would not be retained. MSHA believes that regular fan inspection by the operator is an element of maintaining fans in proper operating condition, and that the frequency of the inspection is dependent on mine-specific conditions. Under the proposal, operators would be expected to inspect auxiliary fans at whatever intervals are necessary to ensure their proper operating condition at all times. MSHA solicits comments on whether fan inspections should be required in the final rule at specific intervals and, if so, what interval would be necessary for all mines to maintain fans in safe condition.

The proposal would require that auxiliary fans be deenergized when no person is present on the working section. This would prevent fans from developing malfunctions or creating ignition or explosion hazards that might not be detected until persons return to the section. The proposal would also require that auxiliary fans be located and operated to avoid recirculation of air.

Paragraph (b) specifies precautions to be taken when the air passing through an auxiliary fan or fan tubing contains 1.0 percent or more of methane. These precautions include deenergizing the fan and electrical equipment in the working place, and switching off other mechanized equipment, until the methane concentration is reduced to less than 1.0 percent. A new provision would also require that if a deficiency exists in an auxiliary fan, the deficiency shall be corrected or the fan shall be deenergized immediately.

With an auxiliary fan is stopped, the proposal would require that face ventilation control devices be used to provide ventilation to the face. This precaution will prevent the creation of "dead-air" spaces and is particularly important for removal of methane when an auxiliary fan is deenergized in accordance with paragraph (b) of this proposal.

The draft requirement that auxiliary fans be deenergized when a main mine fan stops and that they not be started until after ventilation has been restored and methane has been removed has not been retained. MSHA believes that it is unnecessary in this proposal to specify separate precautions for auxiliary fans when main mine fan stoppage occurs. MSHA believes that the precautions for planned stoppages in § 75.311 (Main mine fan operation) and for unplanned stoppages in § 75.313 (Main mine fan stoppage with persons underground) are sufficient to protect miners from the hazards that could be created by auxiliary fans when main fan stoppage situations occur.

Section 75.332 Working sections and working places.

Paragraphs (a) and (c) of this proposal are derived from existing §§ 75.319 and 75.319-1, while paragraph (b) would revise existing § 75.312. The proposal would establish the requirement, derived from existing § 75.319, that each working section be ventilated with a separate split of intake air. This will provide miners on each section with at least one fresh-air intake air current that is not contaminated with gases or dust from another set of mining equipment. The proposal would allow more than one set of mining equipment be used on a split, however, with the condition that only one set at a time may be used for the production of material. Thus, this would permit a second set to be repositioned or maintained while the other set is mining. A set of mining equipment would be defined to include a single loading machine, a single continuous mining machine, or a single longwall or shortwall machine. When two or more sets of mining equipment are simultaneously engaged in the production of material within the same working section, each set of mining equipment would be required to be on a separate split of intake air. Paragraph (a) would apply to longwall or shortwall sections where more than one longwall or shortwall mining machine is used.

The term "abandoned area" in existing § 75.312 would not be retained under this proposal. Instead, the proposal specifies that working places may not be ventilated by air that has

passed through any worked-out area. The proposal includes a definition of "worked-out area." One commenter suggested that the term "abandoned area" be put back into the draft. This is unnecessary, however, as the definition of "worked-out" area encompasses all areas where mining has been completed, including abandoned areas.

The proposal does not retain the draft requirement, derived from existing § 75.312 and applying to pillar recovery, that would have allowed intake air ventilating a line of pillars being mined to ventilate advancing working places immediately adjacent to the line of retreat, provided that the air entering the advancing section contains less than .25 percent of methane. This provision was aimed at permitting an orderly sequence of pillar recovery while recognizing that the hazard of methane ignition would be minimal if methane liberation from the retreat section is less than .25 percent. The proposal adopts the approach, explained more fully regarding § 75.323 (Actions for excessive methane), of establishing a maximum allowable methane concentration of 1.0 percent for all intakes. At this stage in rulemaking, the Agency believes that this approach will help provide protection of all working places from methane hazards.

Section 75.333 Ventilation controls.

This proposal is derived from existing §§ 75.326 and 75.1707 and from criteria in § 75.316-2 used for the approval of mine ventilation plans. This section would apply to all workings, including extensions of existing air courses, haulageways, designated escapeways, and areas where trolley wires or trolley feeder wires are located. The proposal would not apply to rooms that are 600 feet or less in depth, measured from the centerline of the entry from which the room was developed. This exception is derived from the generally accepted mining practice which recognizes the impracticality of establishing permanent ventilation controls in rooms driven less than 600 feet.

The proposal consolidates into one standard the locations where permanent stoppings would be required to be constructed. Permanent stoppings maintain the integrity of intake and return air courses. Therefore, permanent stoppings would be required between intake and return air courses beginning at the fourth connecting crosscut outby each working face. This provision would delete the existing criteria for permanent stoppings between intake and return air courses from the third connecting crosscut outby the working face. This would allow brattice "curtains" to be

arranged in a manner that reduces the necessity of driving equipment through the curtains.

This proposal would also require that: (1) Belt conveyor haulageways be separated from return air courses by permanent stoppings to and including the fourth connecting crosscut outby each working face; and (2) that stoppings be used to separate escapeways from belt and track haulageways, and from areas where trolley wires or trolley feeder wires are located as required by proposed § 75.380(c)(3).

In addition to the construction requirements for ventilation controls specified in the proposal, paragraph (b) includes a new requirement that doors be installed in permanent stoppings separating air courses and haulageways at 300 foot intervals in coal heights below 48 inches and at 600 foot intervals in coal heights 48 inches or above. In a mine emergency, the ability to travel between such entries can be life-saving. Without doors, miners can be required to travel for hundreds or even thousands of feet in entries filled with smoke or other hazards before a means of reaching a safe entry can be found. The specified distance between doors reflects a number of comments on the preproposal draft provision, which required that doors be installed in at least every fifth permanent stopping. Many commenters objected to this preproposal, indicating that this distance can vary greatly from mine to mine. The proposal reflects these comments and takes into account that miners are unable to travel as quickly in lower coal seams. Also, the location of doors in all escapeways would be required to be clearly marked so that persons can easily identify the doors when travelling in the escapeway or in the entries on either side of the doors.

The proposal would permit the installation of airlock doors in permanent stoppings where necessary for machinery to travel and require that their locations be specified in the mine's ventilation plan. So that the integrity of intake and return air courses is maintained when airlock doors are used, the proposal would require that at least one door in each set of doors remain closed when the doors are in use. When the doors are not being used both doors would be required to be closed.

Paragraph (d) would require that all overcasts, undercasts, regulators, shaft partitions, and permanent stoppings be made of durable and noncombustible material, such as concrete, concrete block, brick, cinder block, or tile. Ventilation controls constructed of such

materials provide protection against fires starting at these locations, and prevent the spread of fire. When fire burns through a stopping or other ventilation control, the harmful products of combustion contaminate a greater area, increasing the danger to miners' lives. Thus, the proposal would not permit the use of materials that can fail quickly during fires, such as aluminum.

During an underground coal mine fire, temperatures can reach 1500 to 2000 °F. At this stage in rulemaking, MSHA believes that aluminum is not an appropriate construction material for ventilation controls because most aluminum alloys are known to fail at temperatures below 1500 °F. In fact, most alloys melt at a temperature of approximately 1100–1200 °F, and show a reduction of strength at temperatures well below this. For these reasons, the Agency does not believe that aluminum can be considered a "noncombustible" material, a concept discussed more fully below.

The Agency, however, also recognizes that coatings may be available which, when applied to aluminum, could provide protection against fire for extended periods of time. Consistent with this, the Agency has permitted appropriately coated aluminum ventilation controls to be used in some mines. Thus, the proposal would not require these aluminum ventilation controls already in use in underground mines to be removed. Under the proposed approach, however, no new aluminum controls would be permitted to be installed after the effective date of the final rule.

Another alternative would be to permit the use of appropriately coated aluminum ventilation controls without restriction. Under this alternative, however, the Agency anticipates that inspection of the ventilation controls for cracks, delamination, spalling, and other damage, would be required to be conducted as part of the weekly examination. MSHA solicits comments on both approaches.

Paragraph (d) of this proposal would also require ventilation controls to be maintained so that the controls serve the purpose for which they are intended. Controls of insufficient strength can fail in the event of movement or pressures generated by the mine roof, floor, or ribs.

For purposes of this section of the proposal, paragraph (d) would define "durable" and "noncombustible." Durable material would be material that is structurally equivalent to an 8-inch hollow-core concrete block stopping with mortared joints, as tested in accordance with section 12 the

American Society for Testing and Materials (ASTM), Standard Method of Test E-72 (Conducting Strength Tests of Panels for Building Construction). Noncombustible material would be defined as material that will continue to serve its purpose as a ventilation control when subjected to ASTM E-119 (Fire Tests of Building Constructions and Materials) for one hour.

The definitions of durable and noncombustible are derived from recommendation number seven of the Agency's Task Force Report, "Two-entry Longwall Mining System—A Technical Evaluation." As the report of that Task Force indicates, 8-inch hollow-core concrete block is typical of construction material used for ventilation controls in underground coal mines. Therefore, to establish minimum fire-resistance and structural requirements for ventilation controls, the 8-inch block with mortared joints is used.

The amount of static pressure a material will withstand is demonstrated by test E-72. Structurally sound material will withstand the same or greater static pressure as concrete block, which is approximately 39 pounds per square foot, when this pressure is applied according to ASTM E-72. The noncombustibility of a material, as used in the proposal, is the amount of time the material can be expected to withstand a fire without failure to such a degree as to make it nonfunctional as a ventilation control. During test ASTM E-119, material is subjected to a constant heat source. In order to be considered "noncombustible" a material would have to avoid ruptures or other failures while being subjected to test E-119 for one hour. A rating of one hour is considered to be a reasonable time for miners to exit a mine during an emergency.

At this stage in rulemaking, MSHA feels that Two-entry Task Force recommendation number 7, which bases characteristics of ventilation controls on results of standard tests ASTM E-72, section 12, and E-119, should be applicable to all mines. MSHA solicits comments on this issue.

The proposal would add the requirement that doors and frames in stoppings, ventilation doors, and regulators, be noncombustible or be treated or coated with fire-resistant material on all accessible surfaces. Timbers would be permitted to be placed across an opening to create a stopping in heaving or caving areas, as long as they are coated on accessible surfaces with a fire-resistant material having a flame-spread index of not more than 25, when tested in accordance with ASTM E-162 (Surface Flammability of

Material Using a Radiant Heat Energy Source). Similarly, a new requirement would be that when sealants are applied to any ventilation controls, the sealant must have a flame-spread index of not more than 25, as per ASTM E-162. Based on Two-entry Task Force recommendation number nineteen, MSHA believes that this requirement should be applicable to all mines and is necessary because flame resistant ventilation controls are less susceptible to failing quickly in the event of a mine fire, and therefore contributing to the fire's intensity. Certain ventilation controls may require application of a sealant to prevent or reduce air leakage. Under these circumstances, it is important that whenever sealants are applied to ventilation controls, the sealants themselves do not contribute to the propagation of a flame, or flame penetration.

Derived from existing criteria, paragraph (f) would require a crosscut to be made before mining is discontinued in an entry or room that is advanced in access of 30 feet. Alternatively, the proposal would permit line brattice to be installed to maintain adequate ventilation. Either of these alternatives would prevent the creation of "dead-air" spaces where methane could accumulate and thereby create an ignition or explosion hazard.

Section 75.334 Worked-out areas and areas where pillars are being recovered.

This proposal is derived from existing § 75.329 and criteria in existing § 75.316-2 used for the approval of mine ventilation plans. These provisions specify that bleeder entries, bleeder systems or equivalent means should be used in pillared areas to control the methane accumulation in these areas. During and after pillar recovery, methane gas is generated from cutting and loading operations, and from the strata. When this occurs, bleeder systems route gases away from worked-out areas and areas where pillars are being mined. This proposal would revise the requirements for bleeder systems and establish ventilation standards for control of methane and other harmful gases, dusts and fumes in worked-out areas and for areas where pillars are being mined. A definition of "worked-out area" is included in the proposal. The proposal would require that gases, dusts and fumes from throughout such areas either be routed into return air courses or directly to the surface of the mine, or that such areas be sealed.

Recognizing that there are mines which experienced little methane liberation, the preproposal draft

specified that bleeder systems be established where pillars are being fully or partially recovered in mines in which more than .25 percent of methane in air had been found or in which there had been a methane ignition. Commenters questioned the need for bleeder systems in all mines where the methane threshold was exceeded or where a methane ignition had occurred, indicating that such a requirement would not identify the mines where bleeder systems should be used to control the accumulation of gas.

Rather than requiring the use of bleeders under specified circumstances, the proposal requires ventilation of worked-out areas where no pillars have been recovered to be accomplished by routing gases into a return air course, or directly from the worked-out area to the surface of the mine. Alternatively, the proposal specifies that these areas be sealed. Where pillars are being fully or partially recovered, the proposal would require a bleeder system to be used to control the air passing through the area being pillar-mined to continuously dilute and move gases from all portions of the area into a return air course or directly to the surface of the mine. When pillar extraction is completed in an area, the proposal would require ventilation of the area to be maintained by a bleeder system so that gases are continuously moved into a return air course or to the surface, or the area would be required to be sealed.

The proposal would eliminate the term "bleeder entries" used in the existing rules. Instead, the proposal would define the term bleeder system to include four types of systems. Under the proposal, a bleeder system would include any one or combination of these systems.

One bleeder system would be special air courses designed, developed, and maintained to continuously move air-methane mixtures to a return air course or to the surface. Such systems are generally used in large mines with multiple sections, long-term operations, and mines which do or have the potential to liberate large amounts of methane. Connectors between special air courses and between caved areas would also constitute a bleeder system.

A bleeder system would also include a methane drainage system provided through boreholes. Such a system could be established by drilling or developing the borehole from the surface and into the worked-out area. Other surface openings would also constitute a bleeder system, including those developed from worked-out areas to the surface. In a blowing ventilation system, these openings and methane drainage

systems would permit evaluation of the system to be conducted at a surface location.

This approach to the ignition and explosion hazard of methane accumulation in worked-out areas permits safe, workable ventilation methods to be developed by the operator based on the mining conditions, including methane liberation. Recognizing that small "hill-top" mines which have minimum overburden, short projected operation, and minimum methane liberation may not require the same type of bleeder system as other mines, the proposal would require the type of bleeder system used to be specified in the ventilation plan.

Evaluation of worked-out areas where no pillars have been recovered, and of bleeder systems, would be required during the weekly examination of the mine, as specified by § 75.364 of the proposal. For worked-out areas where no pillars have been recovered, that section would generally require weekly travel to the area of deepest penetration, and measurements and tests at locations where the effectiveness of the ventilation system can be determined. Similar examination requirements would be specified for bleeder systems. In lieu of weekly examination by a person, the use of an AMS would be permitted as an alternative.

Accumulation of methane and oxygen deficient atmospheres continues to present serious hazards in worked-out area. The potential for ignition and explosion is always present unless steps are taken to prevent these conditions. By requiring adequate ventilation of worked-out areas and proper examination, either in the form of weekly travel or evaluation by an AMS, MSHA believes that the potential for serious accidents is substantially reduced.

In accordance with paragraph (e), if measurements and tests indicate that the bleeder system for a worked-out area is not performing properly, or if the system cannot be properly evaluated, the worked-out area would be required to be sealed. Paragraph (f) of the proposal would retain the requirement from existing § 75.330 that each mining system be designed so that worked-out areas can be sealed. The location of proposed seals for worked-out areas would be required to be included on the ventilation map for the mine.

Comments on the preproposal draft indicated some confusion over whether operators would be permitted or required to seal areas of a mine. This proposal would permit sealing in lieu of ventilating worked-out areas. It would

also require sealing if results of air measurements indicate that the ventilation system is not effectively moving gases out of a worked-out area. For clarification, the option to seal worked-out areas where no pillars have been recovered is specified in paragraph (a) of this proposal.

Section 75.335 Construction of seals.

This proposal is derived in part from existing § 75.329-2 and would establish construction requirements for seals. The purpose of seals includes preventing methane or other harmful gases in worked-out areas from escaping, and preventing air from being diverted into the worked-out area. The proposal requires that seals be constructed of noncombustible material with mortar or equivalent fire-resistant material between all joints. Seals would also be required to be constructed in solid floor, roof, and ribs, and hitched at least one foot into the ribs. To prevent damage to seals in the event of a mine fire or other emergency, seals would be required to be coated on all accessible surfaces with fire-resistant material that will also minimize leakage.

Under the proposal, a sampling pipe or pipes would be required to be installed in seals so that the atmosphere in sealed areas can be sampled. Excessive levels of methane or other gases or substances behind seals could indicate that measures need to be taken to protect miners. The proposal would therefore require that sampling pipes be installed in each set of seals for a worked-out area. To prevent leakage of methane or other gases through sampling pipes, each pipe would be required to be equipped with a cap or shut-off valve.

Commenters objected to the draft requirement that sampling pipes extend into sealed areas for a distance of 40 feet.

These commenters indicated that 40 feet is excessive and that representative samples can be obtained with much shorter pipes. Some commenters suggested lengths that they considered to be appropriate.

After consideration of these comments, MSHA agrees that pipes 40 feet long may not be necessary to obtaining accurate sampling of sealed areas in all cases. Accordingly, the proposal requires sampling pipes to extend into sealed areas for a sufficient distance to obtain a representative sample of the sealed area, but in no case could sampling pipes extend less than 15 feet into the sealed area. This proposal is based upon sampling procedures recommended in the 1979 MSHA study.

"Interpreting the State of a Mine Fire." The study indicates that in sampling situations involving fires behind sealed areas, sampling pipes should extend not less than 15 feet toward the fire. MSHA feels that this minimum distance is also applicable to non-fire situations.

Another draft requirement that commenters objected to was that sampling pipes be installed 12 inches from the mine roof. This provision was included in the preproposal since methane is lighter than air and a representative sample would therefore have to be obtained close to the mine roof. One commenter, however, indicated that this provision would create a hazard in high seam mines where it would be necessary to have a ladder in order to reach the pipe. Responding to this comment, the proposal was modified to require only that the sampling end of the pipe be within 12 inches of the mine roof, thus allowing the other end of the pipe to be more accessible.

Water accumulations behind seals is another hazard in sealed areas that could present hazards to miners. Roof falls or mining-through into sealed areas where this condition is present can result in inundations of working areas. Therefore, the proposal would require that a corrosion-resistant water pipe or pipes be installed in seals at the low points of the area being sealed and at all other locations necessary to drain water from sealed areas. To provide additional protection against inundation hazards, the proposal would require water traps to be installed on the outby side of the lowest point of each set of seals.

Paragraph (d) would require that seals be at least 16 inches thick. This requirement is aimed at preventing geologic pressures from damaging seals. To provide additional strength to seals that are more than 16 feet wide, the proposal would require that a pilaster be interlocked near the center of the seal. However, if the seal is greater than 24 inches thick, a pilaster would not be required.

Paragraph (e) of the proposal would permit timbers to be used to create seals in heaving or caving areas, but would modify the draft requirement that timbers used to create seals be treated or coated with fire resistant material. This proposal reflects a comment that it is only necessary to coat the accessible surface of timbers. The accessible surface of timbers or other compressible materials is the area most likely to be exposed to possible sources of ignition. The proposal would also require that the material used to coat seals have a flame-spread index of not more than 25,

as tested in accordance with ASTM E-162.

If specified in the ventilation plan for the mine, this proposal would permit mine operators to construct seals using methods or materials other than those identified in the standard, as long as equivalent protection is provided. This provision recognizes that other methods or materials may be available that can be used to effectively seal worked-out areas, and it would also allow the use of improved methods or technology. The existing requirement for a plan to seal areas has been incorporated into proposed § 75.371 (Mine ventilation plan).

Section 75.340 Underground electrical installations.

This proposal would revise the requirements of existing § 75.1105 and transfer that standard to this Subpart D. The proposal would require that certain underground electrical installations be in fireproof structures or areas and be ventilated by intake air that is coursed directly into a return air course and away from working places. These installations would be those fitting the definition of permanent electrical equipment, which is included in this proposal. Permanent electrical equipment may present fire hazards, depending on the type of installation and the manner that it is used.

Compliance with existing § 75.1105 generally requires regulating the intake air ventilating the electrical equipment into a return air course by way of an opening in a stopping or other ventilation control device after it has passed over the equipment. While this method would continue to constitute compliance with the proposal, a new provision would permit the permanent electrical equipment to be located in a crosscut between an intake regulator and a return entry, subject to certain specified precautions. The proposal would require that when this method is used, the quantity of intake air passing over the equipment be at least 5,000 cubic feet per minute. Also, the air must pass directly into the return, and no part of the equipment would be permitted to extend into the return air course. Additionally, for battery charging stations, the proposal specifies that no part of the station or the equipment being charged would be permitted to extend into the return. Although charging stations are used for charging permissible battery equipment, the equipment, because of the connectors used, is not permissible while it is being charged. For this reason, it cannot extend into the return air course.

MSHA believes that the proposed approach will minimize the fire hazards associated with permanent electrical installations in a number of ways. By coursing the intake air over the equipment and directly into a return, gases and smoke produced by a fire would be prevented from reaching areas where miners are working. Heat from a fire would be prevented from entering the intake escapeway by the cooling effect of the velocity of the air current passing through the intake regulator, thus containing the fire within the crosscut until it can be extinguished. Additionally, a fire would not be likely to cause a reversal of air, and would be contained by the intake regulator, normally a stopping required to be constructed of noncombustible material.

The proposal would also specify exceptions from the general ventilation requirements in paragraph (a) for certain types of electrical equipment. Rectifiers or power centers that move as the working section advances or retreats are one type of equipment that, under the proposal, could be ventilated by intake air not coursed directly into a return. These power sources, which are generally used to deliver electricity to face equipment, are routinely moved as mining advances and retreats. Therefore, should a fire occur involving this type of equipment, the fire is not likely to go undetected. Even if detected by miners, however, the fire could rapidly become serious. Therefore, so that the potential for fires originating from this equipment is minimized, the proposed exception only applies to rectifiers and power centers that are dry-type or that contain nonflammable liquid.

Certain electrical installations necessary for the operation of belt conveyors would also not be required to be located in intake air coursed directly into a return. This proposed exception would apply to installations that are located in an air course equipped with an early-warning fire detection system. This system would be required to be installed as specified in proposed § 75.350 (belt conveyor entries) and would provide early warning of the products of combustion.

Rectifiers for trolley haulage systems, underground substations, power centers, permanent pumping stations would also be permitted to be located in intake air not coursed directly into a return provided that they are housed in a fireproof structure equipped with fireproof doors and an automatic fire suppression system. The enclosure for this equipment would also be required to have automatic safety features that

would be triggered if the temperature in the fireproof structure reaches 165 degrees Fahrenheit or a rise in carbon monoxide concentration of 15 parts-per-million (ppm) above the established ambient level is detected. In the event of either of these conditions fireproof doors must close, power to the structure must be deenergized, and a warning signal must be activated at a surface location that can be seen or heard at all times while any person is underground. The surface location would be required to have access to two-way communication with affected working sections. These measures are necessary since a rise in temperature could provide a source for methane ignitions, or could indicate that a fire has occurred inside the structure since the specified temperature is higher than the safe operating temperature of the electrical equipment. A rise in carbon monoxide concentration of 15 part-per-million (ppm) above the ambient for the area could also indicate the incipient stage of a fire. As discussed more fully with respect to § 75.350 (Belt Conveyor Entries), after the 15 ppm level of CO is reached in a fire situation, a hazardous condition can develop rapidly.

Paragraph (c) of the proposal would apply to permissible pumps, and would permit them to be operated in return air courses. In many instances, the ventilation system can be severely restricted or blocked entirely by water accumulations in returns. For this reason, pumps frequently must be used in these air courses. Since the pumps would be required to be permissible, and be installed in air that is flowing away from working areas, the explosion hazard and the potential for contamination of working areas by the products of combustion are minimized.

Consistent with the definition of permanent electrical equipment, the proposal would apply to compressor stations. MSHA recognizes, however, that certain large compressors can be moved from place to place in a mine. These portable types of compressors can, under certain circumstances, present fire hazards, but a rule that would require all such equipment to be enclosed in fireproof structures and ventilated into a return may be impractical and significantly impair the utility of the equipment. The Agency intends to address this issue in the final rule and solicits comments on the appropriate way to address portable compressors in this rulemaking. Alternatives may include specific ventilation requirements based on the nature of the installation and the use of fire resistant lubricants, or additional

examination requirements which might be included in the proposed preshift or onshift examinations. Also related to this issue, MSHA has examined its existing electrical and fire protection standards, which generally specify protective actions for electric equipment, including precautions based on whether the equipment is attended or unattended, or uses flammable hydraulic fluid. Similar requirements for compressors may be appropriate.

Section 75.341 Direct-fired intake air heaters.

This proposal is new and would establish requirements for the use of direct-fired intake air heaters. The provisions of this proposed standard would provide safeguards against fire hazards, adverse effects on mine ventilation, and persons coming into contact with intake air heaters.

Intake air heaters are becoming increasingly common in the mining industry. Often they are used to heat intake air in colder climates so that surfaces in shafts, slopes, and other mine entries do not become frozen. The use of these device, however, can increase the level of carbon monoxide introduced into the mine, and improperly installed and maintained heaters can be a fire hazard. Also, fuel supplies for heaters can increase the risk of explosion near mine openings, and overheating of intake air can cause air reversals to occur in mine intake shafts.

Under this proposal, heaters would be required to be located or guarded to prevent contact by persons. If any component of a heater system malfunctions, the proposal would require the affected heaters to switch off automatically. Thermal overload devices would be required to protect the blower motor from overheating, and if a flame-out occurs, the fuel supply to the heater must turn off automatically. These safeguards would protect against fires occurring in heaters and heater systems, which can result in the products of combustion being delivered by the main mine fans into the main ventilating current of the mine. Also, so that liquid fuel will not leak into the mine, the proposal would require fuel storage tanks to be located or protected to avoid this occurrence.

Paragraph (d) of this proposal would require a pressure switch or other device to switch off the heaters when the volume of air entering the shaft, slope, or drift where air is being heated is reduced by 10 percent or more when persons are underground. This change from the preproposal draft responds to comments that the language of the draft

provision was too subjective. The preproposal provided that heaters must switch off when the volume of air being heated is reduced and mine ventilation is adversely affected.

Paragraph (d) would not require steam exchange heaters to switch off automatically when the volume of air being heated is reduced, but would instead allow such heaters to be shut down on a delayed basis. This provision recognizes that these heaters need to cool down to prevent steam from building to potentially dangerous pressures.

Section 75.342 Methane monitors.

The proposal retains the requirement in existing § 75.313 that methane monitors be installed on all face cutting machines, continuous miners, shortwall and longwall face equipment, and loading machines. The proposal would include all electric, diesel, or battery-powered cutting or loading machines.

Constant monitoring of methane during mining activities is an important safeguard against methane ignitions and explosions that could endanger the lives and safety of miners. Therefore, in addition to specifying installation and maintenance requirements for methane monitors, this proposal would require that a warning signal be given when the methane concentration in air at any monitor reaches 1.0 percent. The monitor would also be required to deenergize the cutting or loading mechanism of the equipment on which it is mounted when the methane concentration in air at the monitor reaches 2.0 percent.

Commenters indicated that additional hazards can be presented to miners when equipment is suddenly deenergized by a methane monitor. They suggested that the tramping controls of diesel, battery and electric machines on which methane monitors are installed should be allowed to remain in operation when 2.0 percent methane is encountered. This would permit the equipment to be withdrawn to a safe location, if necessary, before it is completely shut off. After consideration of these comments, this suggestion was not included in the proposal. Under no circumstances is a person permitted under unsupported roof. Therefore, if equipment is deenergized by a methane monitor, it is unlikely that the miner would be exposed to a hazard requiring that the tramping controls be operative, particularly since the tramping of equipment alone could be sufficient to create an ignition source of methane.

The proposal retains the existing requirement that monitors be

maintained in permissible and proper operating condition. This prevents a monitor from becoming an ignition source, and would ensure that monitors provide accurate monitoring of methane. The proposal would also require sensing devices of monitors to be installed as close to the working face as practicable.

As noted in the discussion of methane detectors in § 75.320 of the proposal, MSHA believes that maintaining methane monitors in proper operating condition requires that the devices be frequently calibrated. While the proposal does not include a requirement for calibration at specific intervals, MSHA solicits comments on whether the frequency of calibration should be addressed in the final rule.

Section 75.343 Underground Shops and Stationary Diesel Equipment.

This proposal would retain that part of existing § 75.1105 pertaining to underground shops and transfer it to this Subpart D. Additionally, the proposal would address stationary diesel equipment, such as diesel-powered compressors and generators.

Underground shops and stationary diesel equipment would be required to be equipped with automatic fire suppression systems, or enclosed in fireproof structures or areas, and be ventilated with intake air that is coursed directly into a return air course. For shops, these precautions are necessary due in part to the nature of the activities which take place in these areas, such as cutting and welding, and to the materials which are used in shops, such as solvents, oils, and greases. In the event of a fire, the products of combustion need to be moved away from areas where persons are working, and the fire must be controlled. Also, during normal operations in shops, vapors, mists, and fumes are produced which must be vented directly into a return air course so that they are kept out of the air used to ventilate areas where persons will be required to work.

In the case of stationary diesel-powered equipment, the same precautions are necessary to protect against fires and the products of combustion since this equipment is often quite large and frequently operates while unattended.

Section 75.350 Belt conveyor entries.

The proposal revises existing § 75.326, which requires entries used as intake and return air courses to be separated from belt haulage entries and prohibits air that has been coursed through belt entries from ventilating working places. The proposal would allow belt haulage entries to be used as intake air courses

in conventional, continuous, and longwall mining sections, provided that specified safety precautions are used.

The precautions specified in the proposal would not be required for belt conveyors less than 600 feet long that are used on a working section to transport coal from the face, or for cross belt conveyors that are 600 feet long or less and are located on a working section. These exceptions are consistent with the proposed exception for ventilation controls in rooms that are 600 feet long or less specified in proposed § 75.333 (Ventilation controls). Like that exception, this proposal would recognize a generally accepted mining practice.

MSHA's experience regarding petitions for modification of the current standard has been that ventilation benefits are achieved by allowing intake air coursed through a belt conveyor haulageway to ventilate working places. Over 30 petitions for modification have been granted to permit "belt air" to ventilate face areas. This method increases the quantity of air that can be supplied to face areas, and thereby provides increased protection to miners against hazards created by accumulation of methane and other harmful gases, as well as respirable dust. Also, by using the belt entry as an intake, the velocity of air in the belt entry can be increased. This provides more positive ventilation and reduces the possibility of methane accumulation in the belt entry. Additionally, it increases the effectiveness of early-warning fire detection systems, which would be required to be installed in such entries by this proposal. The experience at mines that have used "belt air" is that, properly monitored, it is a safe method of ventilating working places.

In order to use intake air coursed through a belt conveyor haulageway to ventilate a working place, this proposal would require a minimum air velocity of 50 feet-per-minute (fpm). This minimum velocity is necessary to prevent methane from accumulating along or under a belt conveyor. Unlike the preproposal, however, the proposal would not require that the velocity of air coursed through the haulageway be limited to 300 fpm.

The draft's 300 fpm maximum air velocity for belt conveyor entries was derived from MSHA's requirement for fire-resistant belts. Belts are tested for fire resistance in air traveling at 300 fpm, and fires on belts must extinguish at that velocity to gain approval. Comments on the draft proposal, however, objected to the proposed 300 fpm maximum, indicating that this would be unduly restrictive if belt air is to be used to ventilate a working place.

Since these comments were received, the Department of the Interior, Bureau of Mines, has completed preliminary tests to determine the effect of ventilation rate on the fire hazards of rubber conveyor belting. These tests were made at 300 and 800 feet-per-minute airflows on two types of rubber conveyor belts used in the industry. The preliminary results indicated that (1) the fire hazards in terms of flame propagation and fire intensity are no greater at 800 fpm than at 300 fpm for the two belts tested, and (2) downstream combustion products concentrations are reduced and air reversal is negligible at the higher airflow. In light of these results, the proposal does not specify a maximum air velocity when intake belt air is used to ventilate a working place. This would permit the velocity of air in the belt entry to vary based on the ventilation needs to each mine, and would thus maximize the ventilation benefits derived from the use of belt air at the working face.

Also, if intake belt air is to be used to ventilate a working place, the proposal would require the installation of an early-warning fire detection system in the belt entry. Consisting of carbon monoxide sensors that can detect the products of combustion even before a flame is visible, the system would provide an early fire alert and time to react to a fire. The proposal would also require that permanent stoppings be installed to separate the belt entry from escapeways ventilated by intake air and from return air courses. Permanent stoppings, which would be installed in accordance with proposed § 75.333 (Ventilation controls) would provide substantial protection against having fires or the products of combustion spread from one side of a stopping to the other.

Similar protections would be required by the proposal if intake air is used in a belt conveyor entry, but that air is not used to ventilate a working place. The haulageway would be required to be separated by permanent stoppings from return air courses, and the velocity of air in the belt entry would be required to be no less than 50 fpm. Additionally, the proposal would require that air from the haulageway be coursed directly into a return. Since air from the entry would not be routed to working places, the proposal does not require that an early-warning fire detection system be installed. This measure would be unnecessary since the products of combustion from a belt fire would not present an immediate danger to miners.

The early-warning fire detection systems that would be required to be

installed by this proposal are integral parts of atmospheric monitoring systems, which are addressed by § 75.351 (Atmospheric monitoring system) of this proposal. In accordance with that proposed section, sensors for detecting carbon monoxide would be required to be installed not more than 50 feet inby each belt-drive and each belt take-up, or not more than 50 feet inby each belt-drive and take-up combination where the take-up is within 300 feet of the belt drive. Sensors would also be required not more than 50 feet inby each section belt tailpiece. Monitoring at these locations allows detection of possible fires at each end of a belt conveyor. To provide protection along the belt, sensors would be required to be installed at least every 2,000 feet along each belt conveyor haulageway.

Some commenters indicated that continuous monitoring of belt conveyors as proposed by this section would be unnecessary. They suggested that monitoring only while the belt conveyor is operating would be sufficient. However, belt fires can and do occur when belt conveyors are stopped. A drive roller that becomes hot while a belt is operating will concentrate its heat on a fixed point when the belt is stopped and can cause a belt fire to develop. Therefore, continuous monitoring of belt conveyors, even when stopped, is retained in this proposal.

To ensure reliability, the early-warning fire detection system would be required to monitor circuit continuity and sensor operation, and give signals to a designated surface location when a malfunction exists in the system. Signals would also be required to be given when carbon monoxide in air at any sensor reaches 10 parts-per-million of CO above the established ambient level for the area. This proposal would also require persons in working places to be withdrawn. If necessary, corrections would be made. The established ambient level of CO and the method for establishing the ambient would be specified in the mine's ventilation plan.

If a carbon monoxide concentration in air of 15 parts per million or more above the ambient is reached, the early-warning fire detection systems would activate a fire alarm and the mine evacuation plan would be required to be implemented. Several commenters suggested that these carbon monoxide action levels would be too restrictive where diesel powered equipment is used because of the carbon monoxide normally contained in the exhaust of this equipment. The commenters were concerned that an inordinate number of false alarms would result. At this stage

in the rulemaking process, MSHA believes that the proposed action levels are appropriate in order to provide the maximum protection available from the use of early-warning fire detection systems.

In the early stages of a fire, a smouldering fire source will release carbon monoxide before a flame is visible. Visible flame is normally observed when between 10 ppm and 15 ppm of CO is being released into the mine atmosphere. After 15 ppm, fire grows rapidly and the amount of CO released can quickly reach levels that present health risks to miners. See "Equivalency Tests of Fire Detection Systems for Underground Coal Mines Using Low Level Carbon Monoxide Monitors" (Miller, Turcic, and Banfield). For this reason, granted petitions for modification which rely upon early warning fire detection systems have specified alert levels of 10 ppm of CO above ambient, and alarm levels at 15 ppm above ambient, and these levels are retained in the proposal.

This proposal would require that while persons are underground, a person designated by the operator be present at the surface of the mine to see or hear the signals of the carbon monoxide detection systems. This person would be required to have access to two-way communication with persons on working sections and with other persons having identifiable duty stations, and a map showing underground monitoring system components and their locations would be required to be posted at the surface location so that information can be relayed quickly to and from working places in the event of an emergency. Commenters suggested that the persons monitoring the signals and alarms should be stationed underground so that they could perform other duties. After consideration of these comments, MSHA believes, at this stage in the rulemaking process, that the person responsible for responding to signals and alarms should be on the surface. This will ensure that in the event of a fire or other emergency in the mine, the signal location is not endangered by conditions underground. Further, the impact of the proposed requirement could be minimized by having the person on the surface be available for other duties, as long as he or she is continuously able to see or hear signals and alarms from the fire warning system.

Under paragraph (h) of the proposal, if any portion of the early-warning fire detection system malfunctions or is deenergized, the affected belt conveyor may be operated only if a qualified

person patrols the affected area and monitors for carbon monoxide with a hand-held carbon monoxide detection device with a level of detection comparable to the monitoring sensors. The qualified person would be required to have communication with a designated surface location. More than one qualified person would be required to patrol for carbon monoxide if two or more adjacent sensors become inoperative, or if the complete system becomes inoperative. In the latter case, a sufficient number of qualified persons would be required so that the affected belt entry is travelled in its entirety in an hour, or it would be necessary for qualified persons to continuously monitor at the end of each belt flight. If the system remains inoperative after the completion of the shift of which the malfunction occurred, the proposal would require qualified persons to continue to patrol the belt once each hour in its entirety, or qualified persons with hand-held monitors would be required to be stationed at each sensor location. These precautions would ensure that during brief periods when the detection system is inoperative, equivalent means of fire detection will serve to protect miners on working sections from potential belt fires.

The proposal would require that at least once each coal producing shift, carbon monoxide sensors be visually examined. Also, carbon monoxide sensors would be required to be capable of detecting carbon monoxide at a level of ± 1 ppm throughout the operating range. While the proposal does not include a specific interval for calibration of monitoring sensors, MSHA believes that routine calibration will be necessary to maintain sensing accuracy and solicits comments on whether a required calibration interval should be included in the final rule.

Some commenters stated that examination of sensors during each production shift would be burdensome. However, the proposal retains this requirement since the examination is simply a visual one, and the operation of each sensor is important to the overall function of the monitoring system. Also, it would be possible to make this visual examination during the preshift or onshift examination that would be required by this proposed rule.

To verify the performance of the detection system, and provide data regarding trends in the mine, the proposal would require that a record be made when a signal device or alarm of an early-warning fire detection system is activated. This record would include the date, time, and carbon monoxide

concentration at the sensor producing the signal and the reason for its activation. Records would be required to be retained for one year.

One commenter suggested that records made pursuant to this proposal be required to be "available" at the mine for one year. This recommendation, the commenter stated, would allow the use of centrally-stored computerized records. The proposed requirement that records be retained for at least one year does not prohibit centrally-stored computerized records.

MSHA solicits comments on the availability of product-of-combustion sensors that are equally as effective as sensors that detect low-level rises in carbon monoxide. At present, MSHA is unaware of any types of commercially available sensors that provide early-warning capability equivalent to CO sensors. The Agency will determine whether to address alternative types of product-of-combustion sensors in the final rule based on the comments received. Commenters should address the types of sensors the final rule should include, the alert and alarm levels necessary to give early warning of fire, and the appropriate sensor spacing and location.

Section 75.351 Atmospheric monitoring system.

This proposal is new and would establish performance requirements for atmospheric monitoring systems (AMS) used in mines. Under the proposal, an AMS would utilize sensors to monitor the mine atmosphere for products of combustion and other ventilation problems. Like the early-warning fire detection systems used in accordance with proposed § 75.350 (Belt conveyor entries), but depending on the purpose for which AMS are used, monitoring systems would consist of carbon monoxide sensors, as well as sensors for monitoring methane and oxygen. As with proposed § 75.350, MSHA solicits comments on whether the final rule for AMS should consider other types of sensors, and, if so, commenters should address the appropriate alert and alarm levels for these sensors, as well as sensor spacings and locations.

The proposal takes a different approach than the preproposal, which would have required that an AMS be installed in every mine in which a methane concentration of 1.0 percent or more had been detected in a main or submain return air course. Commenters indicated that this draft approach would be prohibitively expensive to a significant number of mine operators. Also, some commenters questioned the methodology used for determining that

1.0 percent methane has been present in main or submain return. After consideration of these comments, MSHA agrees that the 1.0 percent methane trigger for atmospheric monitoring systems as specified in the preproposal may not be the most appropriate way to address this emerging new technology.

On the other hand, MSHA believes that the use of atmospheric monitoring systems should be encouraged. The proposal therefore generally permits the voluntary use of such systems and provides incentives for their use. Operators who install such systems could use them under this proposal to measure methane and carbon monoxide concentrations as specified in proposed sections 75.362 (On-shift examination), to evaluate bleeder systems, including weekly examination of worked-out areas where no pillars have been recovered, as required by proposed § 75.364 (Weekly examination), and to evaluate certain return air courses under proposed § 75.365 (Examination of return air courses developed before March 30, 1970). One commenter recommended that monitoring systems should be permitted to be used in order to satisfy all of the examination and testing requirements of the proposed rule. Although MSHA believes that substantial safety benefits can be achieved by atmospheric monitoring, the Agency does not believe, at this stage in the rulemaking process, that reliance on monitoring systems would provide an adequate substitute for all physical examinations, particularly the preshift and on-shift examinations.

The proposal would also require the use of atmospheric monitoring systems in mining systems where both escapeways required by MSHA standards are ventilated by the same continuous split of air. Derived from MSHA Two-entry Task Force recommendation number four, MSHA believes that this requirement would result in a substantial safety benefit in all mining systems where both escapeways are on the same continuous split of air. Under § 75.380 of the proposal, the ventilation plan would be required to specify new development areas of older mines where two intake escapeways on separate splits cannot be provided. Thus, for some older mines MSHA anticipates that certain new development sections may of necessity ventilate both escapeways on the same continuous split of air. In this situation, an AMS would be required to be installed and operated in the intake escapeway so that the entire escapeway is monitored. The specified locations for AMS sensors would be adjacent to the

section loading point, and at 2000 foot intervals for a distance of at least 6000 feet outby the section. The proposal would require AMS sensors to monitor the mine atmosphere for parts-per-million of carbon monoxide. Early warning of fire in the intake escapeway, for example, would allow miners to escape through the other escapeway before it becomes contaminated by smoke or other harmful products of combustion.

Under the proposal, an AMS would consist of sensing devices to monitor the mine atmosphere and instruments at a surface location designated to receive information from the monitoring sensors. As under paragraph (b), the specific type of sensors and monitoring locations required would be dependent on specific mining situations. Under paragraph (c), an AMS used to monitor belt conveyor haulageways as part of the on-shift examination would consist of sensors to monitor for carbon monoxide and methane at specified locations so that the haulageway can be effectively monitored. Where used to monitor return air splits in accordance with proposed § 75.362 (On-shift examinations), sensors would be required to monitor for methane and carbon monoxide at a location between the last working place ventilated by that air split and the junction where the split meets another split, a seal, or a worked-out area. Monitoring at this location would also be permitted in place of physical measurements in splits of air returning from longwall or shortwall faces.

If in accordance with § 75.364 (Weekly examination) of this part an AMS is to be used to evaluate special air courses used as bleeder systems, sensors would also be required to monitor for methane and carbon monoxide. In addition, the percentage of oxygen in the atmosphere would be required to be monitored so that oxygen deficient atmospheres in the bleeder system do not present a hazard to persons. The locations for these sensors would be where air from a worked-out area enters a return split of air, and at other locations, if the locations are specified in the ventilation plan. This proposal would also allow mine operators to elect to use continuous monitoring by an AMS to substitute for the weekly examination of worked-out areas where no pillars have been recovered. MSHA believes that the use of AMS sensors to monitor methane, oxygen and carbon monoxide where air from the area enters a return split and at other locations specified in the ventilation plan will allow an accurate

assessment of the ventilation system comparable to a physical examination.

The proposal would also establish requirements for monitoring system performance, setting alert and alarm levels, sensor calibration requirements, and requirements for recordkeeping. Like the locations and types of sensors specified in paragraphs (b) through (e), these requirements would apply only when AMS are used in accordance with the proposal. In other words, AMS would have to meet these provisions when installed in intake escapeways as required by paragraph (b), or when used to monitor bleeder systems and worked-out areas, return air splits, or belt conveyor haulageways.

Accordingly, under paragraph (f), a system used in accordance with the proposal would be required to give a signal when an electrical or mechanical deficiency occurs in the system, and depending on the type of monitors used, to give a signal when a sensing device detects a carbon monoxide concentration in air at 10 parts-per-million (ppm) above the established ambient level for that area, when a device detects a methane concentration exceeding an allowable concentration under proposed § 75.323 or the ventilation plan, or when the oxygen concentration at any sensor falls below 19.5 percent. The proposal would further require that when the carbon monoxide level at any carbon monoxide monitoring station reaches 15 ppm above the established ambient level for that area, fire alarms be activated and the mine evacuation plan be implemented.

So that sensing devices are able to detect gases at the specified levels, paragraph (i) of the proposal would require each carbon monoxide sensor to be capable of detecting carbon monoxide in air at a level of ± 1 ppm throughout the operating range. Methane sensors and oxygen sensors would be required to be capable of detecting one percent methane or 19.5 percent oxygen, respectively, with an accuracy of ± 0.2 percent. While the proposal does not include a specific interval for calibration of monitoring sensors, MSHA believes that routine calibration will be necessary to maintain sensing accuracy and solicits comments on whether a required calibration interval should be included in the final rule.

A person designated by the operator would be required to be located at the surface of the mine to see and hear alarms and signals while persons are underground, and to have access to two-way communication with persons on working sections. When a signal or alarm is activated, the proposal would

require the monitor producing the signal to be identified, an immediate examination to be made to determine the cause of the signal's activation, and appropriate action to be taken.

The proposal also would require that a record be made if a signal device is activated. The date, time, methane, oxygen or carbon monoxide concentration at the sensing device producing the signal, and the reason for its activation would be required to be recorded and maintained for at least one year.

Section 75.352 Return air courses.

This section is derived from existing § 75.326. It would prohibit, except in areas of mines opened before March 30, 1970, return air courses from being used as belt haulage entries. The exception for areas of mines opened before March 30, 1970, is derived from the existing standard. It recognizes that in older coal mines developed before the existing standard the belt entry was frequently used as the main intake or return air course for working sections.

Preproposal draft § 75.350 would have permitted the use of belt entries as return air courses, provided that early warning fire detection systems and methane detection systems were installed, and other precautions were taken. Some commenters objected to this draft provision, however, indicating that since air returning from the working section contains methane and coal dust produced during coal extraction, the potential for methane and dust explosion may be increased when this air is coursed over the conveyor belt structure. This hazard, the commenters concluded, would not be adequately addressed by the routine use of continuous monitoring devices.

After consideration of these comments, the proposal retains the existing requirement for separation of belt entries and return air courses. Under the proposal, mine operators wishing to use the belt entry as a return air course would continue to be required to petition the Agency for modification of the standard. Through the petition for modification process, a mine-by-mine assessment is made of the safety and health impact of locating the belt in the return. Under the existing standard the Agency has granted petitions specifying continuous methane and carbon monoxide monitoring and other precautions to protect against the risk of ignition or explosion caused by conveyor belts operated in return air courses.

An alternative to the proposal still being considered by MSHA is to permit conveyor belts in return air courses,

provided that certain precautions are implemented, including continuous monitoring. If adopted, these precautions would be set forth in the final rule. MSHA is particularly interested in additional comment regarding: (1) Specific safety hazards and/or benefits of the proposal to retain the requirement of separation of the belt from the return air course; (2) specific safety hazards and/or benefits of the alternative that would permit belt entries to be used as return air courses; and (3) any additional safety precautions that may be necessary if the alternative is adopted.

Section 75.360 Preshift examination.

This proposal is derived from existing §§ 75.301-3, 75.303 and 75.303-1, and would require that before any shift begins, a preshift examination be conducted by a certified person. Like the existing standard, the preshift examination required by the proposed rule would include examination of underground areas for hazardous conditions and for methane accumulation and oxygen deficiency. Also like the existing standard, this proposal requires that during the preshift examination air volume and velocity measurements be made to verify that the mine is being ventilated properly.

The preshift examination is a primary means of determining the effectiveness of the mine's ventilation system and detecting developing hazards, such as methane accumulations. Identification of these hazards before a shift begins is a traditional safety practice in the industry that can save miners' lives or prevent injuries during the shift. Consistent with this purpose, the proposal retains the requirement from the existing standard that the preshift examination be conducted within three hours before the shift begins.

The proposal clarifies the areas where examinations and tests during the preshift examination would be required to be made. Examinations for hazardous conditions and tests for methane and oxygen deficiency would be required for roadways and track haulageways where persons are scheduled to work or travel on the oncoming shift, for belt conveyors on which persons will ride and for the belt conveyor entries, for working sections, working places, ventilation controls, for seals along intake air courses, and for entries or rooms driven off an intake air course where intake air passes through or along these entries or rooms on its way to a working section. An examination of these areas before a shift begins would alert miners on the

oncoming shift if hazards exist and would allow corrective action to be taken. Also detected during preshift examinations are hazards such as loose roof or ribs, water accumulation, electrical hazards from trolley wires that could cause injury or ignitions, and fire hazards from damaged or improperly operating belt conveyors.

A new requirement would be that the preshift examination include underground areas where unattended diesel equipment will be used during a shift, or where an electrical installation will be energized. These types of equipment can be ignition sources, thereby creating fire and other hazards for miners on the working sections. Examination of these areas before unattended diesel equipment is used or electrical installations are energized can protect against these hazards, and is particularly important before the first shift of the week, when an ignition hazard can be presented by methane accumulating when the mine is idle.

The preshift examination would also include measurements of air volume and velocity at certain locations where determinations can be made that air is reaching working places at the required levels. Measurements would be required to be made of the volume and velocity of air in the last open crosscut of each set of entries or rooms in each working section in the line of pillars containing the permanent stoppings that separate the intake air course and the return air course. Where pillars are being extracted, the location for the measurements would depend on whether a single split of air is used to ventilate the pillar line, or a split system is used. Where a single split of air is used, the measurements would be required in the intake entry immediately outby the first open crosscut outby the line of pillars being mined. In sections where a split system is used, the measurements would be taken in the intake entries immediately outby the split point.

On a longwall or shortwall section, the volume and velocity of air would be required to be measured in the intake entry or entries, at the intake end of the face immediately outby the face. In order to determine that a sufficient velocity of air is moving across the entire face, measurements would also be required to be made at locations at least 50 feet from each end of the face. Where temporary ventilation controls are used in rooms that are 600 feet or less in depth, the air volume and velocity measurements would be required to be made in the last open crosscut in the line of pillars containing the temporary

ventilation controls that separate the intake air courses from the return air courses.

The proposal would reduce and simplify existing recordkeeping requirements for preshift examinations. For each preshift examination, the examiner would be required to certify by initials and date, for each area examined, that the proper preshift examination was made. The time of the examination would be required to be noted. Also under the proposal, a record would be required to be made of uncorrected hazardous conditions and their locations, when these conditions cannot be corrected during the preshift examination. For example, if air measurements at a specified location disclose that the volume and velocity of air at that location is not as required in the ventilation plan, a record of that condition would be required to be made if the condition is not corrected during the preshift examination. The record would be required to be retained at a surface location at the mine for at least one year. If the condition is corrected, or if no hazardous conditions are detected during the examination, the proposal would not require that a record be made.

The proposal would allow records to be made by persons other than the person performing the preshift examination to permit certified persons conducting the examinations to remain underground to perform other tasks. However, the record would still be required to be made before any person, other than certified persons conducting required examinations, enters any underground area of the mine. Also, the certified person who conducted the examination would be required to verify the results of the examination by initials and date upon returning to the surface of the mine.

The proposal would delete the requirement in existing § 75.323 that mine foremen countersign reports of examinations. At this stage in rulemaking, MSHA believes that this requirement is unnecessary since the mine foreman would continue to be responsible for correcting hazardous conditions in the area under his or her supervision. Similarly, the requirement in existing § 75.324 that mine foremen complete a daily report of the condition of the mine under his or her supervision would also be deleted. MSHA believes that this report is duplicative of other recordkeeping requirements specified under this proposal and would result in no additional safety benefits.

Several commenters recommended that certified persons be permitted to

preshift-examine their own work areas. The proposal, consistent with the existing standard, would permit this practice. One commenter also suggested that certified persons conducting preshift examinations should be permitted to be accompanied by another person in case the examiner is injured during the examination. If an operator so chooses, the proposal would permit more than one person to conduct this examination.

Several commenters raised questions about the areas of the mine where a preshift examination would be required. One commenter suggested that all areas of the mine, regardless of whether miners will work or travel there, should be preshift-examined, while other commenters indicated that a preshift examination would be unnecessary in all of the areas specified in the preproposal draft.

After consideration of these comments, MSHA believes that the areas specified in the proposal should be examined in order to protect miners from hazards that may develop. The Agency believes that it is unnecessary to require a preshift examination of all areas of the mine if no persons are expected to work or travel in all areas during the shift. This proposal is intended to provide protection to miners in working sections from hazards which they might encounter during their shift. Other sections of the proposal, particularly the supplemental examination that would be required by § 75.361 (Supplemental examination) of this proposal, would provide additional protections to miners from hazards developing in areas of the mine that have not received a preshift examination.

Paragraph (d) of this proposal incorporates a comment suggesting that preshift examiners should "danger off" areas of the mine that are hazardous for work or travel. Responding to this comment, the proposal provides that a warning sign be posted conspicuously where a hazard exists so that persons entering that area would see it. No person would be permitted to enter the area while the sign is posted unless he or she is designated by the operator to correct the hazardous condition. Unlike existing § 75.303, this proposal would not specify danger signs where violations of mandatory standards exist. This recognizes that the preshift examination is not intended as a complete mine inspection, but assumes that where such violations do constitute hazards, danger signs would be posted.

Section 75.361 Supplemental examination.

This proposal would modify existing § 75.314, and would require that an examination for hazardous conditions be made by a certified person before any person enters an area of the mine that has not been preshift-examined. An examination by a certified person would not be required before certified persons conducting preshift or other examinations that would be required by this proposal enter such areas, nor would the supplemental examination be required for persons, who, because of the nature of their work, travel throughout the mine. As under the existing rule, the proposal would permit these persons to make their own examinations for hazards, provided that they are trained and qualified in the use of air quality detectors and air measurement devices. The required supplemental examination would include tests for methane and oxygen deficiency, and a determination that the air is traveling in its proper course and at its normal volume and velocity. The proposed certification provision is like that prescribed in proposed § 75.360 (Preshift examination).

The preproposal draft provided that persons, such as pumpmen, who enter areas that have not been preshift-examined may make the supplemental examination for themselves under certain conditions. Several commenters indicated that this exception for pumpmen should be expanded to allow other persons, such as belt mechanics, to conduct the examination. This proposal reflects those comments and, like the existing standard, recognizes that certain occupations require miners to travel and work in remote areas of the mine. References to pumpmen and belt mechanics are used in the proposal only as examples.

One commenter suggested that only a certified preshift examiner should be permitted to conduct the supplemental examination and that qualified persons not be permitted to conduct supplemental examinations for themselves. This suggestion was not incorporated into the proposal, since at this stage in the rulemaking process, MSHA does not believe that modification of the existing requirements would serve the practical purpose to which this aspect of the proposal is directed, nor would it result in a significant increase in safety benefits.

Section 75.362 On-shift examination

This proposal is derived from existing §§ 75.301-3, 75.303-1, 75.304, 75.307,

75.307-1, 75.309 and 75.309-2 and would establish requirements for on-shift examinations. Like the preshift examination, the on-shift examination would include examination for hazardous conditions, tests for methane and oxygen deficiency, and measurement of air volume and velocity at specified locations. However, unlike preshift examinations, this section would require on-shift examinations only on shifts on which coal is produced. This approach is retained from the existing standard and recognizes that there is a greater potential for hazards to develop on coal-producing shifts than on non-coal producing shifts.

A certified person would be required by this proposal to examine each working section on which coal is produced during the shift. Since the mining environment changes constantly during coal production, this examination would verify that hazards have not developed on the section since the area was preshift-examined, and would include tests for methane and oxygen deficiency.

A proposed new provision would require on-shift examination of belt conveyor haulageways in which belts are operated. With the potential for heat or sparks to be produced by belts moving over stuck or improperly operating belt rollers, belt conveyors can be a major source of ignition in underground coal mines. Examination of belt conveyors is thus aimed at reducing the potential for the development of hazards associated with operating belts. The proposal would require the entire belt conveyor to be examined during production shifts. If a certified person conducts the examination, the proposal would allow the on-shift examination to satisfy the requirements for preshift examination of the belt conveyor and haulageway, provided that the examination is made within three hours preceding the oncoming shift. Allowing these examinations to be conducted at the same time eliminates a potentially duplicative examination requirement while maintaining the safety protection afforded by belt examinations.

The proposal would require certified persons conducting on-shift examinations to repeat the air volume and velocity measurements at the locations where measurements would be taken during the preshift examination. This provides an additional check of the mine's ventilation system and verifies that ventilation changes in the mine during the production process have not occurred. Reduced volume or velocity of

air during the shift can contribute to increased levels of respirable dust and the occurrence of methane accumulations or oxygen-deficient atmospheres.

Immediately before equipment is operated or energized in working places, paragraph (d) would require a qualified person to test for methane. These tests would be required at the last permanent roof supports or, when longwall or shortwall mining is used, at the headgate and tailgate. Methane tests would verify that equipment can be safely energized in the working place and miners would thereby be protected from methane ignition or explosions. Additional tests may also be required at intervals during the operation of equipment if specified in the ventilation plan for the mine. This provision would replace the requirement that qualified persons test for methane at intervals of not more than 20 minutes where electrically operated equipment is energized. Some mines experience little methane liberation. Therefore, the frequency of methane tests would be determined on a mine-by-mine basis. In developing the ventilation plan, consideration would be given to the quantity of methane liberation or other gas-related problems. MSHA solicits comments on whether the proposal should specify a time period for additional methane checks to be included in the ventilation plan.

To detect methane accumulations under or around operating belt conveyors, paragraph (e) of the proposal would require that a qualified person test for methane along each belt conveyor haulageway in which a belt is operated during the shift. These tests would be required during the shift at intervals not to exceed 4 hours, and thus would be in addition to the on-shift examination of belt conveyors that would be required by paragraph (b) of this proposal. These checks would detect accumulations of methane liberated from the coal being transported, which can be ignited by heat or friction generated by the operating belt. As a compliance alternative, the proposal would allow methane tests along belt haulageways to be made by an atmospheric monitoring system (AMS).

A test for methane would also be required every four hours in each return air split on each working section. This test would determine whether methane levels in air returning from the face are within safe levels. The tests would be made by a certified person between the last working place, or longwall or shortwall face, ventilated by that air

split, and where the split meets another air split, or a seal or worked-out area. Like the methane test specified for the belt conveyors and haulageways, monitoring by an AMS could be substituted for testing by a certified person.

Commenters objected that the 4-hour interval for methane tests in belt entries and return air splits would be excessive. At this stage in rulemaking, however, MSHA believes that due to the nature of the hazard presented by methane accumulations, a 4-hour check of methane will ensure that necessary attention is paid to methane accumulations in the areas specified in order to provide adequate safeguards against the risk of ignition and/or explosion.

The proposal would reduce and simplify existing recordkeeping requirements. Certified persons making on-shift examinations would be required to certify by initials and date that the examinations were conducted, and note the time of the examination at each working place examined. Also, a record of uncorrected hazardous conditions and their locations would be required to be made. These records would be required to be retained at a surface location at the mine for at least one year and made available to authorized representatives of the Secretary and representatives of the miners.

Section 75.364 Weekly examinations.

This proposal is derived from existing §§ 75.305 and 75.306 and would require that a weekly examination be conducted in all mines. The weekly examination would be required for worked-out areas and for locations where hazardous conditions could inhibit the mine's ventilation system or otherwise endanger miners.

A weekly examination would be required for all unsealed worked-out areas where no pillars have been recovered. This examination would include travel by a certified person to the point of deepest penetration in the worked-out area, as well as measurements of methane and oxygen concentration, and tests to determine if the air is moving in its designated direction, at locations where the effectiveness of the ventilation of the worked-out area can be determined. Equally effective alternatives to weekly travel may be specified in the ventilation plan. This would allow worked-out areas to be evaluated without subjecting the examiner to travel in areas where travel is difficult, or where bad roof or other unsafe conditions in worked-out areas exist. In lieu of any weekly examination by a

certified person, the proposal would permit the alternative of continuous monitoring by an AMS. If this alternative is chosen, installation and operation of the system would be as specified in proposed § 75.351(e).

The proposal would similarly require weekly examination of bleeder systems used to ventilate areas where pillars have been fully or partially extracted. Measurements of methane and oxygen concentration, and tests to determine if air is moving in its designated direction, would be required at locations where air enters the worked-out area and where it enters a return split of air. Also, unlike existing criteria which provide for weekly travel and examination of bleeder entries, the proposal would require weekly travel of special air courses used as part of bleeder systems to locations specified in the ventilation plan where measurements can be made to determine the effectiveness of the bleeder system. Measuring methane and oxygen concentrations, and determining the direction of air flow at these locations will allow the performance of the ventilation system in worked-out areas to be assessed while minimizing the exposure of persons to hazards while traveling bleeders. The proposal would also permit the alternative of continuous monitoring of special air courses by an AMS.

The weekly examination would also include an examination of intake and return air courses to determine whether there is proper ventilation in the entire air course. An examination would also be required of each seal along return air courses, each designated escapeway so that the escapeway is travelled in its entirety, and at regulators. The examination would include an evaluation of hazardous conditions present, tests for methane, and air velocity measurements. To provide compliance flexibility, the proposal would allow any portion of the weekly examination to be conducted by a certified person during the preshift or on-shift examinations.

A new provision would require weekly examination and travel of at least one air course, in its entirety, on the tailgate side of each longwall mining section. Derived from MSHA Two-entry Task Force recommendation number one, this requirement would enable the weekly examiner to verify that no conditions on the tailgate side of the longwall exist that will impede ventilation or egress by persons. Ground failures or any other blockages in tailgate entries could require additional ventilating pressures in order to overcome the increased resistance caused by the obstruction and thereby

restore longwall ventilation to within specified levels. As the Two-entry Task Force report indicates, any restriction in tailgate entries severe enough to prohibit a travelable route may present a serious impairment to proper longwall ventilation.

The proposal would retain, with clarifying changes, the existing provision that the weekly examination is not required when no persons are in the mine over a period of seven or more consecutive days. The proposal would also retain the existing prohibition against persons other than certified persons from entering any underground area of the mine if, within the previous 7-day period, a weekly examination has not been made.

The proposal would revise existing recordkeeping requirements for weekly examinations. Persons making the examinations would be required to certify that they have examined an area by placing their initials, the date, and noting the time at a sufficient number of locations to indicate that the area has been examined. A record of uncorrected hazardous conditions and their locations would be required to be made and retained at a surface location.

One commenter suggested retention of the current standard, objecting to provisions that would allow atmospheric monitoring systems to perform all or parts of weekly examinations. The commenter stated that regular physical examination is the only way to ensure that airways are being ventilated and maintained. MSHA agrees that physical examinations are a necessary element in the detection of certain hazards. Therefore, this proposal modifies the draft provision that would have allowed all of the weekly examination to be conducted by an AMS, and retains requirements for physical examination during the weekly examination.

Section 75.365 Evaluation of return air courses developed before March 30, 1970.

This section is new and would provide an alternate procedure to the weekly examination of certain return air courses. Mine operators would be permitted to evaluate any return air course developed before March 30, 1970, provided that the air course is unsafe for travel. Such air courses would have to be specified in the ventilation plan for the mine.

Remote evaluation of return air courses would minimize exposure of persons to adverse conditions that may be present in older returns. These conditions may include bad roof, bumps

and bounces from ribs, and other hazardous conditions. Therefore, instead of physical examinations, this proposal would permit air measurement stations to be established at locations where the air quality and quantity for the return air courses can be determined. Approaches to such stations would be required to be maintained in safe condition. At least once each day that coal is produced on any shift, an evaluation would be required to be made by certified persons at the air measurement stations. The evaluation would include measurement of air velocity, carbon monoxide, and methane, as well as a determination that the air is traveling in its proper direction. Under the proposal, an atmospheric monitoring system (AMS) may be used in lieu of the evaluation being made by certified persons.

One commenter stated that the measurements and tests required at air measurement stations should be made weekly rather than daily. However, changes in ventilation can occur in a return air course at any time. Therefore, MSHA believes that the air quality and quantity conditions in these air courses should be evaluated daily for early identification of adverse trends.

An immediate investigation of affected areas would be required to be made when a measurement taken at an air measurement station shows that (1) the methane concentration in air increases by more than 0.5 percent from the average methane concentration at that station during the previous seven days, (2) the air velocity measurement varies by more than 10 percent from the average air velocity at that station during the previous seven days, or (3) any change in the direction of the air current has occurred.

The proposal would require that persons making the evaluations certify by initials, date, and time, that the evaluations and tests were performed at each air measurement station. The proposal would also require the certified persons to make a record of uncorrected hazardous conditions and their locations. This record, in addition to printouts generated by atmospheric monitoring systems, would be required to be retained for one year at a surface location and made available to authorized representatives of the Secretary and representative of miners.

Several commenters indicated that this provision should apply to all air courses that are unsafe for travel, and not just to those developed before March 30, 1970. The proposal does not include this suggestion since, at this stage in the rulemaking process, MSHA believes that physical examination of

returns is the better method of evaluating air courses developed after March 30, 1970. A provision permitting remote evaluation of older returns is appropriate since prior to 1970, returns were not required to be maintained so that they could be travelled weekly. Since 1970, however, travelable returns have been required. Affirmative measures to keep returns developed since 1970 in safe condition are therefore necessary, and the Agency believes that this emphasis should be maintained. Requests to allow evaluation of "post-1970" returns that are unsafe for travel would continue to be considered on a mine-by-mine basis through the petition for modification procedure.

Section 75.370 Mine ventilation plan submission and approval.

This proposal would revise and consolidate existing §§ 75.316 through 75.316-2. The proposal retains the existing requirement 75.316-2. The proposal retains the existing requirement that each mine be ventilated in accordance with a ventilation plan developed by the mine operator and approved by the District Manager. The ventilation plan concept, which has been used effectively throughout the coal mining industry, grew out of a need for flexibility to address the unique conditions of each mine. Under the plan approach, mining conditions and experience with such conditions in the mine are addressed on a mine-by-mine basis.

A commenter suggested that miners, through their representatives, have the right to participate in the review of ventilation plans for approval. MSHA recognizes that miners play an important role in safety and health activities and therefore has structured the proposal to include a role for miners' representatives in the plan approval process. MSHA anticipates that after the proposal becomes final, the Agency would propose, through separate rulemaking, to conform MSHA's roof control plan approval provisions to the final form of the rule outlining the miners' role in the ventilation plan approval process.

The proposal would retain the requirement that the ventilation plan proposed by the operator be submitted to the District Manager for approval in writing. However, when revisions are proposed, the operator would need to submit only the revised pages, maps or sketches of the plan. Therefore, the entire plan would need not be submitted when, for example, the operator proposes a small addition or the replacement of a few pages. However,

the District Manager would have the discretion to require that the entire plan be resubmitted when the submission of revised pages would prevent effective evaluation of the plan. A copy of the proposed ventilation plan and any revisions to the plan would have to be provided to the representatives of miners.

Paragraph (a)(3) would allow the operator and the representative of miners to submit additional written information to the District Manager concerning the plan. It would also afford both the operator and the representative of miners the opportunity to meet with the District Manager to discuss the plan. Any party submitting additional information would be required to provide a copy of it to the other party.

Paragraph (b) sets out the procedure for notification of approval or denial of approval of ventilation plans, retaining the existing practice that the operator be given written notice of approval actions. Under the proposal, the operator and the miners' representative would be advised of the deficiencies of the proposed plan or revision for which approval is denied, together with changes recommended for approval. The operator and miners' representative would then be given an opportunity to discuss with the District Manager the problems identified and potential solutions.

The Agency believes that all segments of the mining community recognize the importance of mine plans as an essential component to an effective safety and health program. Therefore, the proposal seeks to involve both the mine operator and the representative of miners in developing a meaningful and effective plan. This aspect of the proposal would not, however, change the responsibility of the mine operator to develop and submit a suitable ventilation plan, and MSHA would continue to independently evaluate such plans for approval. Based on its experience with the current plan approval process, MSHA anticipates that the procedures contemplated by this proposal would resolve most issues without difficulty.

Paragraph (c), however, would allow the operator to appeal plan approval decisions by District Managers to the Administrator for Coal Mine Safety and Health. To use this procedure, which is new, the operator would have to appeal the District Manager's decision within 30 days of receiving notification of a plan approval denial. The operator's appeal would be required to notify the Administrator in writing of the reasons for disagreeing with the District Manager, and the operator would have to provide a copy of the appeal to the

representative of miners. Under the proposal, the representative of miners would be afforded the opportunity to submit additional information to the Administrator. After reviewing the appeal, the Administrator would issue a final decision on the disputed plan provisions. As noted above, however, MSHA anticipates that most plan approval issues would be resolved at the District Manager level.

Consistent with existing practices, the proposal would clarify that ventilation plans or revisions not be implemented until approved. Also, paragraph (d) would require that before implementing a revision to an approved ventilation plan, all persons who are affected by the revision must be instructed in its provisions. Complete understanding of the requirements of the approved plan is essential to its effective implementation. Paragraph (g) of the proposal would require that approved plans and revisions be available at the mine for inspection by an authorized representative of the Secretary and representatives of the miners.

In the preproposal, the Agency asked for comments regarding the deletion of the existing provision requiring ventilation plans to be reviewed every 6 months by MSHA and the operator. In lieu of this, MSHA personnel would review the adequacy of ventilation plan provisions during regular inspections, which are conducted at least once each quarter in underground mines.

A commenter objected to the deletion of the 6-month review, stating that plans must be reviewed periodically so that they can be properly revised as mining conditions warrant. The draft proposal deleting the 6-month review, however, was an approach that based evaluation of ventilation plans on the conditions at each mine rather than on routine review of the plan's provisions. The Agency did not intend to eliminate periodic review of ventilation plans. To clarify this approach, the proposal specifies that ventilation plans be reviewed by MSHA at least every six months. The proposal would also retain the obligation on mine operators that ventilation plans be suitable to the conditions and the mining system to be used at each mine, therefore requiring continuous attention to the content of plans.

Paragraph (h) would require that ventilation plans be revised to meet the requirements of the new Subpart D within 6 months from the effective date of the final rule. This provision would only affect ventilation plans which contain provisions in conflict with the final rule. As previously discussed, many of the provisions that are currently addressed in ventilation plans

have been included in the proposal as mandatory standards or have been deleted. In either case, such provisions may no longer need to be addressed in the plan. Revising inconsistent or conflicting provisions in plans will ensure that miners are aware of the approved plan's requirements, and will eliminate any ambiguities that may arise.

Section 75.371 Mine ventilation plan; contents.

This proposal is derived from existing § 75.316-1, and lists the measures that would have to be addressed in each mine ventilation plan. While the plan would still address ventilation and methane control practices, the scope would be narrowed so that ventilation plans would be more relevant and less burdensome. Where the existing criteria are applicable to all mines they are included in the proposed rule as mandatory standards and would not be required to be included in ventilation plans. The plan for each mine would thus contain only the particular ventilation and methane control measures necessary to address the unique conditions of the mine. As a result, mine ventilation plans would be less complex, and more relevant, practical and useful.

In addition to the flexibility provided for by the plan approval process, the proposed rule retains the existing provision which authorizes the District Manager to require that additional measures be included in a mine ventilation plan. This aspect of the proposal recognizes that, despite comprehensive revisions and improvements in the proposed standards, current experience and practices are inadequate to predict and address unique hazards at individual mines which, if the mine ventilation plans are to be adequate, will need to be addressed.

Each ventilation plan would be required to specify the mine name, the name of the company owning or controlling the mine, and a phone number for the mine. The proposal would also require the operator to include the mine identification number in the plan submission to the Agency. This requirement will enable MSHA to develop a complete information base so that any decision can be made on the basis of all relevant facts including a profile of the mine's previous enforcement history.

Inclusion of the identification number for each mechanized mining unit (MMU) in the ventilation plan would provide information regarding the location of active working sections. An MMU is a

set of mining equipment which generally includes face cutting machines, loading machines, roof bolting machines, and other equipment. This information assists the Agency in evaluation of the face ventilation systems and of drawings illustrating how such systems are used on working sections, which also would be required to be provided under this proposal.

Since control of methane accumulation is a primary purpose of a mine's ventilation system, each plan would be required to include information regarding means to be used to minimize this hazard. This proposal would require that methane control systems at underground coal dumps, crushers and transfer points be specified. These locations are where freshly mined coal can liberate significant quantities of methane. The proposal would require that where methane drainage systems are used to control methane, a description of each system and a pertinent sketch be included in the plan. The type, model, and manufacturer of methane monitoring sensors used would also be required.

Proper ventilation underground also serves to protect miners from excessive levels of respirable dust. Therefore, the proposal retains the existing requirement that respirable dust control information be provided in the plan. This information would include a description of the dust suppression system on each piece of equipment on each working section, and the dust control systems at underground dumps, crushers, and transfer points. Also, in conjunction with existing § 70.208 (Bi-monthly sampling; designated areas), the locations where the operator is required to collect designated area samples must be included in the plan, and the plan must include the respirable dust control systems used at the dust generating sources for these locations.

Proposed § 75.311 (Main mine fan operation) would require that combustible and flammable material not be allowed to accumulate in the area surrounding main mine fans for at least 100 feet. However, the proposal would permit other safe methods of protecting main mine fans from combustible and flammable material to be specified in the ventilation plan if a clear area of 100 feet cannot be provided. This approach would allow compliance flexibility and recognize other safe methods.

Proposed § 75.311 also generally would require that main mine fans be continuously operated, except when stopped for scheduled maintenance or adjustment. Fan stoppages for other

than these reasons would also be permitted if specified in the plan, together with the procedures to be followed during such stoppages. This proposal recognizes that some mines do not operate fans during periods when the mine is shut down. Also, since generally these are smaller mines which often operate for only one shift per day, the proposal would permit, in accordance with § 75.310, devices to be used to monitor main mine fan pressure at these mines that are other than pressure recording devices and main fan monitoring systems. The alternative device would be required to be specified in the ventilation plan.

The proposal would require that the volume and velocity of air ventilating each working place be established in the ventilation plan for the mine. Derived from existing § 75.301-4, this approach is designed to allow volume and velocity to vary depending on particular conditions at the mine. It would require that each mine operator submit in the mine's ventilation plan the minimum volume and velocity of air necessary to provide adequate ventilation and protect against methane accumulation, dust, and other hazards.

This proposal recognizes that air volume and velocity are dependent on factors such as coal seam height and width of entries and is responsive to comments on the air velocity provisions in the preproposal draft. Many of these comments indicated that it is unnecessary for MSHA's standards to specify minimum requirements for both velocity and quantity of air. Also, these comments indicated that the minimum velocities specified in the preproposal of 60 feet-per-minute (fpm) in working places and 100 fpm in other areas may have been too much for some mines and not enough for others. After consideration of these comments, the proposal would allow variations in volume and velocity according to coal seam height, width of entries, as well as methane liberation, and the amount of dust produced during mining. Each operator would be required to submit in the ventilation plan the volume and velocity of air at the locations specified in §§ 75.360 and 75.362 where air velocity measurements will be required to be made during the preshift and onshift examinations.

The proposal would also require the ventilation plan to address air quantities under certain circumstances. For example, proposed § 75.325 requires the quantity of air reaching the working face to be greater than the operating volume of machine-mounted dust collectors and diffuser fans. However, if the operating

volume cannot be determined, or if a different quantity is necessary, the quantity would be required to be included in the ventilation plan.

Where air quantities in bituminous and lignite mines, or in longwall mining systems in such mines, need to be greater than the minimum quantities that would be required by proposed § 75.325 (Air quantity), this proposal would require these quantities to be specified in the ventilation plan. This approach recognizes that particular mining conditions may require greater quantities than the minimum quantities set forth in proposed § 75.325. The quantity of air where diesel equipment is used would also be required to be included in the plan.

Proposed § 75.326 would require that in exhausting face ventilation systems, the mean entry air velocity be at least 60 feet per minute. This is based on MSHA's experience that in exhausting systems compliance with respirable dust standards can be maintained in all mines given this velocity and assuming 1.0 mg/m³ of respirable dust in intake air and face ventilation controls used to within 10 feet of the face. An alternative mean entry air velocity may be specified in the ventilation plan, if, for example, less than 1.0 mg/m³ of dust is maintained on intake air and a lower velocity will maintain compliance with respirable dust standards.

Distances to which ventilation controls are used from each working face would also be specified in the ventilation plan. Under proposed § 75.330, ventilation controls must be installed at a distance that will maintain compliance with standards for respirable dust and methane concentrations. Additionally, the plan would specify working places other than those where coal is being cut, mined, or loaded where face ventilation controls would be required to be used.

In accordance with proposed § 75.334 (Worked-out areas), the ventilation plan would include the type of bleeder system to be used in worked-out areas where pillars have been fully or partially recovered. Also, the locations for evaluation of special air courses used as bleeder systems would be specified in the ventilation plan. This location would be where measurements and tests of the ventilation of the area will be conducted. If an AMS is used to evaluate a bleeder system, the ventilation plan would include locations for monitoring sensors necessary for effective evaluation of the bleeder system.

If airlock doors are installed in permanent stoppings as specified in § 75.333 (Ventilation controls), the

location of these doors would be required by this proposal to be identified in the ventilation plan. The plan would also have to include a description of the materials and the construction methods to be used to seal work-out areas if those methods or materials will be different than the methods required by proposed § 75.335 (Construction of seals).

Monitoring for carbon monoxide levels or methane concentrations is specified in several sections of this proposed rule. Where monitoring systems are used, this proposal would require that the ambient level in parts-per-million of carbon monoxide in those areas be set forth in the ventilation plan as well as the method used to determine the ambient. The ventilation plan would also be required to include the type, model, and manufacturer of monitoring sensors. This information would allow thorough evaluation of the effectiveness of monitoring systems.

The proposed on-shift examination provisions specify that a methane test must be made by a qualified person at intervals during the operation of equipment, where experience with methane liberation indicates that this is necessary. Consistent with this provision, the proposal provides that the locations and intervals for methane checks be specified in the ventilation plan.

The proposed weekly examination provisions would require weekly travel to the area of deepest penetration of worked-out areas where no pillars have been recovered. However, the proposal recognizes that in some mines weekly travel of these areas may be difficult or even unsafe for the examiner. The proposal would thus permit methods of evaluation equally as effective as weekly travel to be specified in the ventilation plan. Also, as when an AMS is used to evaluate bleeder systems under proposed § 75.364, the proposal specifies that when an AMS is used in lieu of a weekly examination of areas where no pillars have been recovered, locations for monitoring sensors necessary for effective evaluation of ventilation in the area would be required in the plan.

Return air courses that would be evaluated in accordance with § 75.365 (Evaluation of return air courses developed before March 30, 1970) would also be required to be identified in the mine's ventilation plan. Under the proposal, air courses that would be evaluated are those that are unsafe for travel and cannot be evaluated in accordance with the proposed weekly examination.

Proposed § 75.380 would generally require each working section to be provided with two escapeways ventilated with intake air. However, the proposal would recognize that some new development areas of older mines may not be capable of providing two separate and distinct intake escapeways to the surface or surface escape facilities. Therefore, the proposal would require that such areas be specified in the ventilation plan.

Prior to planned mining into an abandoned area, the procedures for mining through would be required to be specified in the ventilation plan. In accordance with proposed § 75.1702, the ventilation plan would include the method of ventilation, the ventilation controls to be used, the air quantities and velocities to maintain, and other procedures and precautions that will be used during the mining-through operations. Specifying this information in the ventilation plan will enable precautions to be implemented that will adequately protect miners from methane accumulations or other hazards in the abandoned area, as well as from interruption or changes in ventilation when mining-through occurs.

§ 75.372 Mine ventilation map.

This proposal is derived in part from existing §§ 75.316-1, 75.1200 and 75.1200-1, and would require that the operator submit an accurate up-to-date mine ventilation map to the District Manager at least once every 12 months. Under paragraph (c) of the proposal, the mine map that would be required by existing § 75.1200 (Mine map) could be submitted as the ventilation map, as long as all of the information that would be required by the proposal is included on the map.

The ventilation map would provide basic information for evaluation of the mine's ventilation plan. So that a sufficient number of maps are available to effectively evaluate plans, the proposal would require three copies of the map to be submitted.

The proposal retains the provision that maps be scaled to not more than 500 feet to the inch, and adds a provision that the scale be not less than 100 feet to the inch. The proposal also requires that a responsible company official certify that the map is accurate.

Ventilation maps would be required to show the mine name, company name, and the mine identification number. Also, this proposal would require that all maps have a legend identifying the scale of the map and the symbols used.

Like the current requirements for maps in § 75.316-1, this proposal would require ventilation maps to provide

information regarding adjacent mine workings. All known workings on mine property that are located in the same coalbed, and all other known mine workings that are located in the same coalbed that are within 200 feet of existing or projected workings would be required to be on the map. Mining-through unintentionally into an adjacent working could disrupt mine ventilation and expose miners to hazards from water accumulations, oxygen deficiency, or accumulation of methane or other gases. The proposal would permit a scale not exceeding 2,000 feet to the inch so that adjacent workings can be more easily shown on the map.

The proposal retains the existing requirement that all known mine workings that are above or below the mine property be shown on the map. The distance between mine workings would also be required by this proposal. A hazard that can be presented by overlying workings is that water can accumulate in such areas and inundate underlying active workings if a roof fall or similar event occurs.

Accidental mining into an oil or gas well underground can result in an ignition, fire or explosion. Accordingly, this proposal would require that the locations of all known oil and gas wells be shown on the map, as well as the location of all known oil or gas drill holes that penetrate the coalbed being mined.

Other information that would be required on the map would include the location and specifications of each main mine fan and any stand-by fans. To provide information regarding air entering and leaving the mine, each map would show mine openings, the direction and quantity of air measured at each opening, and, where air is leaving the mine, the methane concentration that is normally in the air. The elevation at the top and bottom of each shaft and slope and its dimensions would also be required to be on the map.

Also required would be information regarding the flow of air underground. The ventilation of all underground areas would appear on the map, as well as the location of all ventilation controls, excluding temporary ventilation controls used on working sections. To provide a visual lay-out of the ventilation system of the mine, the direction and quantity of air in each working section would be required to be shown so that the air is depicted entering and leaving each split, passing through the last open crosscut of each set of entries or rooms, and at the intake end of each pillar line. Also specified in the proposal is information regarding locations where sampling

devices will be placed to collect designated area respirable dust samples in accordance with existing § 70.208 (Bimonthly sampling; designated areas). New information that would be required by this proposal would include the locations of all carbon monoxide and methane sensors. This information would verify that sensors will be located in areas where adequate monitoring can be maintained.

The location of proposed seals for worked-out areas would be included on the map so that a determination can be made that an area of a mine can be sealed in the event of a mine fire or other emergency. Under proposed § 75.334, each mining system would be required to be designed so that each worked-out area can be sealed.

Commenters objected to the draft requirement that projections for at least 18 months of anticipated mine development be included on the mine map. They indicated that mining conditions and mining projections can change frequently, and accurate mine development for a period of 18 months would be difficult to anticipate on a mine map. Upon reconsideration, the current 12-month requirement has been retained in the proposal. The draft provision that would have required the proposed location of methane drainage systems and air measurement and evaluation points to be projected for at least 18 months on the map was also changed to 12 months.

One commenter suggested that numerous other items be included on the mine ventilation map in addition to the information specified. Some of the commenter's suggestions, like mines above or below, had already been included in the preproposal. Others, like the property lines of the mine, are unrelated to mine ventilation and were not included. The proposal is intended to require only that information which is necessary to reflect mine ventilation conditions and conditions that may affect mine ventilation or present hazards to miners. Related to this purpose, the commenter did suggest, however, that including contour lines or elevations sufficient to accurately indicate the dips and raises of the coalbed being mined would be valuable information on a mine ventilation map. Therefore, the proposal adds this requirement.

Section 75.380 Escapeways

The proposal is derived from existing §§ 75.1704, 75.1704-1, 75.1704-2, and 75.1707 and would transfer those standards to this Subpart D. The

proposal would establish requirements for escapeways for all mines.

Escapeways are the primary means of egress during a mine fire or similar life-threatening situation. Accordingly, the proposal would retain the existing requirement that at least two travelable passageways in each mine be designated as escapeways and be provided from each working section continuous to the surface or to escape shaft or slope facilities to the surface. To minimize the potential that one escapeway would become contaminated with smoke during a fire or otherwise become untravelable if the other escapeway loses its effectiveness as an escape route, the proposal would require escapeways to be separate and distinct passageways.

Under the proposal escapeways would be required to be maintained in safe condition to ensure passage at all times by any person, including disabled persons. The route of travel to the surface would be required to be clearly marked, and to facilitate travel, escapeways would be required to be maintained to at least a height of 5 feet from the mine floor to the mine roof, including the thickness of any roof support. In order to minimize the impact of this requirement in lower coal seams, escapeways would be required to be maintained to the height of the seam where the seam height is less than 5 feet.

The proposal would require that escapeways be maintained at least 4 feet wide. This requirement would modify the existing criteria in § 75.1704-1 that escapeways be maintained at a width of at least six feet. This criteria is based on an assumption that a width of at least six feet is necessary so that a person on a stretcher could be easily carried out of a mine. At this stage in rulemaking, the Agency believes that a width of 4 feet is sufficient to allow passage of a stretcher in all mines, and that a more significant requirement facilitating emergency egress is that escapeways be maintained to a height of at least 5 feet.

Escapeways would be required to follow the most safe and direct practical route to the surface. Impractical routes would therefore not be required to be designated, even though they may be the shortest routes of travel. Where escapeways cross over obstructions, such as overcasts or belts, they would be required to be provided with ladders, stairways, ramps or similar facilities that would allow miners to cross and transport disabled persons. Also, the proposal would permit multiple compartment shafts or slopes to be designated as separate and distinct

passageways, as long as the compartments are separated from each other by walls constructed of noncombustible material.

A new requirement would be that designated escapeways be ventilated with separate splits of intake air. The Agency believes that this would provide a substantial safety benefit to miners in that if one split of intake air becomes contaminated, another escapeway on fresh intake air will be available for emergency egress. Under existing § 75.1707, only one escapeway is required to be ventilated with intake air.

MSHA recognizes that in some mines two escapeways on intake air may not be possible without changes in the mining system, or possibly the mine design. Therefore, to allow time for these mines to adjust to this requirement, the proposal would apply to mines opened after the effective date of the proposal, and to areas of mines developed after this date. A new development area would not include working panels where mining is being completed, such as retreating longwalls. Additionally, in the case of new development areas, the ventilation plan may specify areas where a second intake escapeway cannot be provided. However, in no case would any new development be permitted under the proposal to have less than one escapeway ventilated with intake air. For areas developed prior to the effective date, the proposal would retain the existing requirement of one intake escapeway.

The proposal to establish an exception from the two intake air escapeway requirement for new development areas would not allow approval, through the ventilation plan, of longwall mining systems using two entries for development. Rather, the proposal is designed to lessen the impact on older miners unable to provide two intake escapeways based on conditions existing prior to the new standards. Under these circumstances, the rule would permit the operator to specify, for approval in the ventilation plan, new development areas where only one separate intake escapeway can be provided. Where this results in the escapeways being on the same continuous split of air, an AMS would be required to be installed in accordance with proposed § 75.351.

The proposal also specifies requirements aimed at minimizing potential fire or explosion sources in the escapeways themselves. For example, the proposal would require that at least one designated intake escapeway be separated from belt and trolley haulage entries for the entire length of these

entries, to and including the fourth connecting crosscut outby each working face. This distance from the face would conform to the proposed requirement in § 75.333 (Ventilation controls) that permanent stoppings be installed to and including this crosscut. The proposal would, however, require separation in older mining systems only where it exists prior to the effective date of the proposal. Therefore, separation would not be required for areas where separation is not required under the existing rule. Existing § 75.1707 does not require separation in working sections of mines opened prior to March 30, 1970, and for distances in entries that are approved by the District Manager.

Also aimed at keeping ignition sources out of intake escapeways, the proposal would not permit permanent electrical equipment or diesel equipment outby working panels in at least one intake escapeway from each working section. A definition of permanent electrical equipment is included in this proposal. The proposal would not require permanently installed equipment to be removed from areas of mines developed prior to its effective date, and would allow certain types of equipment in new developments. These types would include equipment necessary to maintain the escapeway in safe, travelable condition, and haulage equipment necessary for the transportation of persons and materials. Consistent with paragraph (c)(3) of the proposal, haulage equipment permitted in the escapeway would not include belts or trolley haulage. Additionally, and consistent with § 75.340 of the proposal, underground substations, power centers, and permanent pumping stations would be permitted in the escapeway provided that this equipment is housed in fireproof structures that are equipped with fireproof doors and an automatic fire suppression system.

The proposal would address shafts and slopes in designated escapeways and require that mechanical escape facilities be provided and maintained under specified circumstances. These would be when shafts are greater than 50 feet in depth and when slopes are either inclined 9 degrees or more from the horizontal, or 500 feet or longer. Specific technical and performance requirements for mechanical escape facilities are included in § 75.381 of the proposal. Also, paragraph (e) would require mechanical escape facilities to be operational at the bottom of each shaft and slope that is part of an escapeway within 30 minutes of notification of surface mine personnel under paragraph (f) that an emergency

requiring evacuation has occurred. Paragraph (f) would require a means of signalling a surface location at the bottom of each escape slope or shaft. This surface location would be where a person is always on duty when persons are underground.

Stairways or mechanical escape facilities would be required in escape shafts that are 50 feet or less in depth. If stairways are used, they would be required to be made of concrete or metal, set at an angle not exceeding 45 degrees from the horizontal, and equipped on the open side with handrails. To facilitate escape, particularly when disabled persons are being transported out of the mine, the proposal would require that platforms be installed at intervals of 10 vertical feet in stairways. The dimensions of platforms would be required to be 2 feet by 4 feet, and they would be required to have handrails on open sides.

Where shafts in designated escapeways are 5 feet or less in depth, the proposal would permit a ladder to be used in lieu of stairways or mechanical facilities, as long as the ladders are made of metal, anchored securely, and set at an angle of 60 degrees or less. In slope or drift openings that are part of escapeways, the proposal would require travelways to be designed to prevent slippage during escape. These travelways would be required to be included less than 9 degrees, and be less than 500 feet long. Travelways would not be required where mechanical escape facilities are used.

Section 75.381 Mechanical escape facilities.

The proposal is new and would establish requirements for mechanical escape facilities installed in designated escapeways in accordance with proposed § 75.380. Normally, such facilities would be used as a means of escape in shafts deeper than 50 feet, and in other situations where travel is difficult.

Mechanical escape facilities would be required to be provided with overspeed, overwind, and automatic stop controls. These safety features are aimed at minimizing the risk of hoisting accidents during escape that are caused by mechanical malfunctions. So that facilities can be stopped if necessary in an escape situation, facilities handling platforms, cages, or other devices in which persons are carried would be required to be equipped with brakes capable of stopping the personnel carrier when fully loaded.

Additional safety requirements would include a provision that escape facilities have rated capacities consistent with

the loads handled. This would prevent accidents from occurring due to failure of an overloaded escape facility. Another safety requirement would be that facilities have indicators that reliably and accurately indicate the position of the facility. This would enable the surface operator of the facility to be aware of its location at all times while persons are being transported.

Paragraph (c) of the proposal would require that mechanical escape facilities be examined weekly. This weekly examination would include examination of automatic elevators used for emergency escape purposes, and would be permitted to be conducted at the same time as a daily examination of hoisting equipment required by existing § 75.1400-2. The examination would include an examination of headgear, connections, links and chains. Also, at least once each week, the proposal would require hoists to be run by a qualified hoisting engineer through one complete cycle of operation to verify that the facility will be operational in the event of an emergency requiring escape.

Paragraph (d) would require a qualified hoisting engineer to be on duty while any person is underground, unless facilities are operated automatically. This is necessary since an emergency requiring operation of the facility could occur at any time.

Section 75.382 Escapeway maps and drills.

The proposal is derived from existing § 75.1704-2 and would specify requirements for escapeway maps and drills. These requirements are intended to ensure that miners are familiar with mine escape routes so that if escape is necessary miners will be capable of reaching the surface as quickly as possible.

The proposal would require operators to maintain two types of escapeway maps. One map would be required to be posted in each working section to show the designated escapeways from the working section to a location where the section escapeways intersect main escapeways. A second map would be required showing the main escapeways. This map would be required to be posted at a surface location of the mine where miners congregate. These locations would include near the mine bulletin board, bathhouse, or waiting room. Posting maps at one of these locations will give miners the opportunity to become familiar with their escape routes.

The proposal would require all maps to be kept up-to-date. Therefore, any

changes in the route of travel, locations of doors, or airflow direction must be shown on the map by the end of the shift on which the changes are made so that during a mine emergency miners do not react based on inaccurate information. Similarly, when affected miners enter the mine after changes are made, the proposal would require that they be informed of the changes.

Paragraph (b) of the proposal would retain the existing requirement that each miner participate in a practice escapeway drill, including travel of each escapeway from the working section to the main escapeway. Recognizing that some miners have working stations located between working sections and main escapeways and that for these miners travel from the section may not effectively familiarize them with their escape routes, the proposal would also require miners not working on sections to be drilled on escapeways from their work stations to main escapeways.

A more frequent escapeway drill, in addition to the 90-day drill for all miners, would be required for at least two miners on each coal producing working section. These miners would be required to travel escapeways from the section to the surface accompanied by the section supervisor. This drill, also retained from the existing provision, is necessary so that if the supervisor is absent from work or is performing duties at a location not on the section, there is a greater likelihood that other miners on the working section will be available who are familiar with the escape route to the surface. Consistent with this purpose, the proposal would require this drill to be conducted for each shift.

The proposal would require that before or during escapeway drills, miners be informed of the locations of fire doors, check curtains, smoke retarding doors, and of changes in routes of travel, as well as plans for diverting smoke from escapeways. During mine emergencies, especially mine-fire situations, it may be necessary to utilize such devices to change ventilation to divert air from a fire or smoke from escapeways.

Paragraph (c) of the proposal would allow the escapeway drills to satisfy the fire drill and evacuation requirements of existing § 75.1101-23. This proposal is retained from the existing standard since the escape routes travelled during the proposed escapeway drills will be those used for all mine emergencies requiring evacuation, including mine fires.

Section 75.383 Shortwall and longwall travelways.

The proposal is new and would require that a travelway be provided as a means of egress from shortwall or longwall panels when both escapeways that would be required by proposed § 75.380 are on one side of the block of coal being mined. This travelway would be required on the side of the block of coal opposite the escapeways, and would be required to follow the most direct and safe practical route to an escapeway.

In shortwall and longwall mining systems, escapeways are normally located on the headgate side of the panel. Therefore, MSHA anticipates that most travelways provided in accordance with the proposal will be located on the tailgate side of longwalls and shortwalls. As MSHA's Task Force on Two-entry Longwall Mining indicated, safe travel across a longwall face to headgate entries may not be possible if an emergency occurs in the headgate area. In this type of situation, an unobstructed travelway through tailgate entries is necessary to prevent miners from being trapped in face areas without a viable means of egress.

The proposal recognizes that ground failures can occur in tailgate entries and therefore would not require the travelway to be located in the tailgate entry immediately adjacent to the panel. This would permit a route avoiding obstructions through other tailgate entries to be established, as long as this route is the most direct and safe practical route to an escapeway. If the route of travel is established by crossing into or using more than one entry, the route would be required to be clearly marked.

The proposal does not require the MSHA be notified if a roof fall occurs that blocks passage through the travelway provided under § 75.383. Existing reporting requirements in 30 CFR Part 50, however, require such notification for all unplanned roof falls at or above the anchorage zone of roof bolts, and for unplanned roof or rib falls that impair ventilation or impede passage.

Section 75.384 Opening new mines.

This proposal retains the requirements in existing § 75.1705 that when new mines are opened, not more than 20 miners shall be allowed in the mine until a connection is made between mine openings. This provision is necessary to minimize the exposure of persons to hazards in the initial stages of mine development when two escapeways continuous to the surface cannot be

provided. The proposal would require that connections be made between mine openings to provide two escapeways as soon as possible.

Section 75.385 Final mining of pillars.

The proposal would retain requirements in existing § 75.1706 and address final mining of pillars. Similar to proposed § 75.384, this provision would apply to a mining situation in which two escapeways to the surface cannot be provided. Final mining of pillars is conducted during the close-out period of a mine. The proposal would permit no more than 20 miners in the mine during this period, and require that the distance between the mine opening and the working face be no longer than 500 feet.

Section 75.1701 Boreholes in advance of mining.

The proposal would revise and clarify existing § 75.1701 and retains requirements that boreholes be drilled: (1) When an advancing working place approaches within 50 feet of any accessible area which is in the same coalbed and has been surveyed; (2) within 200 feet of inaccessible areas in the same coalbed which have not been surveyed; and (3) within 200 feet of any mine located in the same coalbed which has not been examined during the previous 7 days.

Abandoned or other inaccessible areas of a mine can present several hazards to active workings when these areas are inadvertently or improperly mined into. These areas may contain potentially dangerous accumulations of gases or water, which could result in explosions or inundations. To increase the likelihood of detecting potential hazards when boreholes are drilled, the proposal also includes requirements for the pattern of drilling and the length of the holes. Boreholes would be required to be drilled into the working face, parallel to the rib and within three feet of each rib. Additional holes would be required to be drilled at 8 foot intervals across the face. To maximize the effectiveness of drilling, the boreholes would be required to be at least 20 feet in depth, drilled in advance of the face before mining begins, and maintained at all times to a distance of 10 feet in advance of the face as mining continues.

Paragraph (c) would specify requirements for drilling into at least one rib of advancing working places in order to detect potential hazards in inaccessible areas not directly ahead of the direction of advance. These boreholes would be required to be drilled at angles of 45 degrees to the direction of advance, at least 20 feet

deep, and at intervals not exceeding 8 feet.

If a borehole penetrates an abandoned or inaccessible area, the proposal would require that tests be made to determine the direction of airflow in the borehole, the pressure differential between the active workings and the penetrated area, the concentration of methane, oxygen, carbon monoxide and carbon dioxide, and whether water is impounded within the penetrated area. Additionally, the proposal specifies the circumstances under which the borehole would be required to be plugged. Wooden plugs or similar devices would be required unless action is taken to dewater or ventilate penetrated areas, and one of three conditions is present. One condition would be when tests conducted at boreholes indicate that the atmosphere in the penetrated area contains hazardous concentration of gas, such as methane and carbon monoxide, or is deficient in oxygen. Another condition would be when tests for methane, oxygen, carbon monoxide and carbon dioxide concentrations cannot be made because air from active workings is flowing into the penetrated area through the borehole. Finally, the third condition that would require plugs to be inserted into boreholes would be when water is discharging from the penetrated area and into mine workings through boreholes.

Section 75.1702 Mining into inaccessible areas.

The proposal is new and would establish procedures for mining into inaccessible areas. It would require that when an area is penetrated by a borehole under proposed § 75.1701, mining would cease and not be permitted to resume until conditions in the penetrated area can be determined and procedures to be followed for mining into or through the area are specified. The proposal would also require that a copy of the procedures for mining into the penetrated area be posted near the site of the mine-through, and that miners involved in the operation have these procedures explained to them.

To address hazards that can be expected to be encountered in the penetrated area, the proposal specifies the minimum requirements for mining-through procedures, and would require that these procedures be specified in the ventilation plan. Under the proposal, the method of ventilation would be established, as well as the ventilation controls to be used, the necessary air quantities and velocities, and

dewatering procedures to be used if the penetrated area contains water accumulations. Additional procedures necessary to protect those involved in the mine-through operation would also be included in the plan.

Paragraph (c) would require that prior to and during mining-through operations, air quality tests by certified persons be conducted at intervals and locations necessary to protect miners. Also, only those involved in the mining-through operation would be permitted in the mine, and an examination by a certified person after the operation is completed would be required before persons re-enter the mine.

Other Issues

Methane tests before planned roof fall. Appearing as § 75.323 in the preproposal, the draft standard was derived from existing § 75.315, which specifies that a qualified person test for methane "immediately before a planned roof fall begins." the preproposal also provided that the area affected by the roof fall contain less than 1.0 percent methane before the fall begins, or that changes or adjustments be made to reduce the methane concentration to less than 1.0 percent. Several commenters requested clarification and questioned the need for the draft proposal.

The draft standard was intended to address pillar recovery. It specified that a methane test be made before a fall occurred and created an ignition source. Commenters, however, indicated that since a fall could occur without warning at any time during pillar recovery, there would be no way to know when to make the required examination. They also stressed that once conditions for a roof fall are created, there would be little or no time to make changes or adjustments in ventilation, regardless of whether 1.0 percent of methane was present.

After review of these comments, the draft standard was not retained in the proposal. However, proposed § 75.362 (On-shift examination) would require a qualified person to test for methane before mining equipment is energized during pillar recovery, and the proposal retains continuous monitoring for methane under § 75.342 (Methane monitors).

Other Existing Sections Affected

The proposal would delete existing §§ 75.320 since the hazards addressed by this standard are addressed by the Agency's explosives and blasting proposal (51 FR 17284). Section 75.320 generally requires that before blasting may be conducted in any underground area an examination must be made and

the air must contain less than 1.0 percent methane.

The Agency also proposes to delete existing § 75.325, which requires that before a coal mine is reopened after having been abandoned or declared inactive by the operator, MSHA must be notified and an inspection must be made. This provision is duplicative of the notice requirements of the existing MSHA standard for opening or reopening coal mines in 30 CFR § 75.1721. That standard also specifies that operators submit a plan to open a new mine or reopen an abandoned or deactivated one, and sets out information required to be in the plan.

Derivation Table

The following derivation table lists the number of each proposed standard and the number of the existing standard from which it is derived.

New section	Old section
75.300	75.300.
75.301-2	No change.
75.310(a)	75.300-2 (a) and (b) and 75.300(b)(2).
75.310(b), 310(b)(1) and 75.310(b), 310(b)(2).	75.300-2(c).
75.310(c)	New.
75.310(d)	75.300-2(b)(2).
75.310(e)	75.300-2(d)(2).
75.310(f)	75.300-3 (a)(e).
75.311(a)	75.300-3 (a)(1) and (a)(3).
75.311(b)	75.321.
75.311(c)	75.300-3(b).
75.311(d)	75.300-2(a)(3).
75.311(e)	75.300-2(f).
75.312(a)	75.300 and 75.300-4 (a) and (b).
75.312(b)	New.
75.312(c)	75.300-(new).
75.312(d)	75.300-4(c).
75.312(e)	75.300-4(b).
75.312(f)	New.
75.312(g)	75.300 and 75.300-4(e).
75.312(h)	75.300-4(e).
75.313(a)	75.321.
75.313	New—75.321-1.
75.313(c)	New.
75.320(a)	Part new—75.304-3, 75.305-2, 75.307-1, 75.308-2, 75.309-1, 75.310-2, 75.311-1, 75.312-2, 75.314-1, 75.315-1, and 75.317.
75.320(b)	75.304—New.
75.320(c)	New.
75.320(d)	New.
75.320(e)	New.
75.321(a)	75.301.
75.321(b)	75.301-5.
75.323(a)	Part new—75.308.
75.323(b)	New—75.308 and 75.308-1.
75.323(c)	75.308.
75.323(d)	75.309(b).
75.323(e)	Part new—75.310, and 75.316-2 (h) and (i).
75.323(f)	75.316-2(i).
75.324	Part new—75.322.
75.324(a)	75.322.
75.324(b)	75.322.
75.324(c)	New—75.322.
75.324(d)	75.322.
75.325(a)	New.
75.325(b)	75.301-1.
75.325(c)	75.301—Part new.
75.325(d)	75.301-4(a).
75.326	Part new—75.327 and 75.327-1.
75.327	75.302(a) and 75.302-3.
75.330(a)	75.302-1(a).
75.330(b)	75.302-1(a).

New section	Old section
75.331(a)	Part new—75.302-4(a).
75.331(b)	75.302-4(b)(e).
75.331(c)	Part new—75.302-4(b)(c).
75.331(d)	New.
75.332(a)	75.319.
75.332(b)	75.311 and 75.312.
75.332(c)	75.312 and 75.312-2.
75.333(a)	Part new—75.302-3, 75.316-2(b), 75.325, and 75.1704.
75.333(b)	New.
75.333(c)	New.
75.333(d)	75.316-2(b).
75.333(e)	New.
75.333(f)	75.316(c).
75.334(a)	Part new—75.329.
75.334(b)	Part new—75.316-2(e), and 75.329.
75.334(c)	New.
75.334(d)	New.
75.334(e)	75.316-2(f).
75.334(f)	75.329—Part new.
75.334(g)	New.
75.335(a)	Part new—75.329-2.
75.335(b)	New.
75.335(c)	New.
75.335(d)	New.
75.335(e)	New.
75.335(f)	New.
75.340(a)	Part new—75.1105.
75.340(b)	Part new—75.1105.
75.340(c)	New.
75.341	New.
75.342(a)	75.313.
75.342(b)	75.313.
75.342(c)	75.313.
75.342(d)	75.313-1.
75.342(e)	75.313-1.
75.342(f)	Part new—75.313-1.
75.343	Part new—75.1105.
75.350(a)	New.
75.350(b)	Part new—75.326.
75.350(c)	Part new—75.326.
75.350(d)	New.
75.350(e)	New.
75.350(f)	New.
75.350(g)	New.
75.350(h)	New.
75.350(i)	New.
75.350(j)	New.
75.350(k)	New.
75.350(l)	New.
75.351	New.
75.352	Part new—75.326.
75.360(a)	75.303(a).
75.360(b)	75.303(a).
75.360(c)	Part new—75.303.
75.360(d)	75.303(a).
75.360(e)	75.303.
75.360(f)	75.303.
75.360(g)	75.303.
75.361	Part new—75.314.
75.362	75.301-3 and 75.303-1, Part new—75.304, 75.307, 75.307-1, 75.309, and 75.309-2.
75.364	Part new—75.305.
75.365	New.
75.370	Part new—75.316 and 75.316-2.
75.371	Part new—75.316-1(b).
75.372	Part new—75.316-1(a).
75.380(a)	75.1704, 75.1704-1, and 75.1704-2(b).
75.380(b)	New.
75.380(c)	New—75.350.
75.380(d)	New.
75.380(e)	New.
75.380(f)	New.
75.380(g)	Part new—75.1704-1(c).
75.380(h)	New.
75.381(a)	New—75.1400(a).
75.381(b)	New—75.1400(b).
75.381(c)	New.
75.381(d)	New—75.1400(e).
75.381(e)	New.
75.381(f)	New.
75.381(g)	New.
75.382(a)	New—75.1704-2(d).
75.382(b)	75.1754-2(e).
75.382(c)	New—75.1754-2(f).
75.383	New.
75.384	75.1705.
75.385	75.1706.
75.386	New.

Redesignation Table

The following redesignation table lists the section number of the existing standard and the section numbers of proposed standards which contain revised provisions derived from the corresponding existing section.

Old section	New section
75.300.....	75.300, 75.312(a), and 75.312(g).
75.300-1.....	Remove.
75.300-2(a)(1).....	75.310(a)(1)
75.300-2(a)(2).....	75.310(a)(1)
75.300-2(a)(3).....	75.310 (a)(3) and (a)(4), and 75.311(d).
75.300-2(b)(1).....	75.310 (a)(5) and (a)(6), 75.310(d)(1), 75.310(a), and 75.310(d).
75.300-2(b)(2).....	75.310 (a)(5), (a)(6), (d)(1), (e)(1) and (e)(3).
75.300-2(c)(1).....	75.310(b)(1).
75.300-2(c)(2).....	75.310(b)(2).
75.300-2(d).....	75.310(f).
75.300-2(e).....	75.310(e).
75.300-2(f).....	75.311(e).
75.300-3(a)(1).....	75.311(a).
75.300-3(a)(2).....	75.311.
75.300-3(a)(3).....	75.311(b).
75.300-3(b).....	75.311(c).
75.300-3(c).....	Remove.
75.300-4(a).....	75.312(e).
75.300-4(b).....	75.321 (a) and (c).
75.300-4(c).....	75.312(d).
75.300-4(d).....	75.312(f)(g).
75.300-4(e).....	75.312(g).
75.300-4(f).....	Remove.
75.301.....	75.321 (a) and (b) and 75.325(d).
75.301-1.....	75.325(b).
75.301-3 (a) and (b).....	75.360(c).
75.301-3(c).....	75.325(c) and 75.362(c)(3).
75.301-3(d).....	75.325(b)(2).
75.301-4(a).....	75.325.
75.301-4(b)(1).....	75.326.
75.301-4(b)(2).....	Remove.
75.301-4(c).....	Remove.
75.301-5.....	75.321(b).
75.301-6.....	Remove.
75.301-7.....	Remove.
75.301-8.....	Remove.
75.302-(a).....	75.330(b)(2).
75.302(b).....	Remove.
75.302(c).....	75.330(a).
75.302-1.....	75.330(b)(2).
75.302-2.....	Remove.
75.302-3.....	75.333(3).
75.302-4(a).....	75.331(a).
75.302-4(a)(1).....	Remove.
75.302-4(a)(2).....	Remove.
75.302-4(b).....	75.331(b).
75.302-4(c).....	75.331(c).
75.302-4(d).....	75.331(c).
75.302-4(e).....	75.331(b).
75.302-4(f).....	75.331(c).
75.302-4(g).....	Remove.
75.303(a).....	75.360.
75.303(b).....	Remove.
75.303-1.....	75.360 and 75.362.
75.303-2(a).....	75.320(c).
75.303-2(b).....	75.320(a).
75.303-2(c).....	Remove.
75.304.....	75.362.
75.304-1.....	Remove.
75.304-2.....	Remove.
75.304-3.....	75.320.
75.305.....	75.364.
75.305-1.....	75.364.
75.305-2.....	75.320.
75.306.....	75.364.
75.306-1.....	Remove.
75.306-2.....	75.364.
75.307.....	75.320 and 75.362.
75.308.....	75.323 (a), (b) and (c).
75.308-1.....	75.323 (b) and (c).
75.308-2.....	75.320.
75.309-(a).....	75.362(g).
75.309(b).....	75.323(d).
75.309-1.....	75.320.
75.309-2.....	75.323 (a) and (b)(2)(c)(2), and 75.362(g).

Old section	New section
75.309-3.....	75.323(2)(c)(2).
75.309-4.....	Remove.
75.310.....	75.323(e).
75.310-1.....	Remove.
75.310-2.....	75.320.
75.310-3.....	Remove.
75.311.....	75.332.
75.311-1.....	75.320.
75.312.....	75.332 (b) and (c).
75.312-1.....	Remove.
75.312-2.....	75.320(a) and 75.332(c)(2).
75.313.....	75.342.
75.313-1.....	75.342.
75.314.....	75.361 (a) and (b).
75.314-1.....	75.320.
75.315.....	Remove.
75.315-1.....	Remove.
75.316.....	75.370.
75.316-1(a).....	75.372.
75.316-1(b).....	75.371.
75.316-2(a).....	Remove.
75.316-2(b).....	75.333 (a), (b) and (c).
75.316-2(c).....	75.333(f).
75.316-2(d).....	75.323(e).
75.316-2(e).....	75.334(b).
75.316-2(f).....	75.334(e), 75.364 (a), (e), (f), and (g).
75.316-2(g).....	Remove.
75.316-2(h).....	75.323(e).
75.316-2(i).....	75.323(e).
75.317.....	75.320.
75.318.....	Remove.
75.319.....	75.332(a).
75.319-1.....	75.332.
75.320.....	Remove.
75.321.....	75.311 (b) and (c), and 75.313.
75.321-1.....	75.313(b).
75.322.....	75.324.
75.323.....	Remove.
75.324.....	Remove.
75.325.....	Remove.
75.326.....	75.350(b) and 75.352.
75.327.....	75.327.
75.327-1.....	75.327.
75.328.....	75.334.
75.329.....	75.334.
75.329-1.....	75.334.
75.329-2.....	75.335 (a) and (h).
75.330.....	75.371(q).
75.330-1.....	75.371(q).
75.1704.....	75.380(a).
75.1704-1.....	75.380(a).
75.1704-1(a).....	Remove.
75.1704-1(b).....	Remove.
75.1704-1(c).....	75.380(g).
75.1704-2(a).....	Remove.
75.1704-2(b).....	75.380(a)(6).
75.1704-2(c).....	75.364(b)(5).
75.1704-2(d).....	75.382.
75.1704-2(e).....	75.382(b).
75.1704-2(f).....	75.382.
75.1707.....	75.350.
75.1701-1.....	75.350.

III. Drafting Information

The principal persons responsible for preparing this proposed rule are: Tony Turyn, Office of Standards, Regulations, and Variances, MSHA; James V. Bowman, Mark O. Eslinger, and John J. Somers, Coal Mine Safety and Health, MSHA; Edward J. Miller, Office of Technical Support, MSHA; and David M. McConnell, Office of the Solicitor, Department of Labor.

IV. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA, has prepared an initial analysis to identify potential costs and benefits associated with the proposed changes to its ventilation standards for underground coal mines. The Agency

has incorporated this analysis into the Initial Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In this analysis, summarized below, MSHA has determined that the proposed rule would not result in major cost increases nor have an effect of \$100 million or more on the economy. Therefore, the rule is not within the criteria for a major rule and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small businesses when developing regulatory proposals. This proposed rule would include alternative compliance methods, several of which would directly benefit small mining operations. In addition, the proposal would clarify compliance responsibilities and adopt performance-oriented standards when possible.

In the following summary of the Initial Regulatory Flexibility Analysis, MSHA has compared the costs and benefits associated with the proposed requirements with the costs and benefits of the existing requirements. A copy of the full analysis is available upon request.

MSHA estimates that the cost of compliance with the proposed rules would be less than the estimated cost of compliance with the existing requirements. The annual recurring costs of the existing rules are estimated to be \$212,275,000, while total recurring compliance cost with the proposed requirements are \$204,940,000. The estimated annual savings to the coal mining industry is thus \$7,335,000 per year.

The proposed regulations would affect approximately 2,000 underground mining operations. MSHA estimates that 1,150 of these mines are small businesses. For purposes of the Regulatory Flexibility Act, MSHA has defined small business entities as mines with fewer than 20 employees.

Annual recurring costs of the existing rules for small mines are estimated to be \$44,240,000. Recurring costs of the proposed regulations for small mines are estimated to be \$42,865,000, a yearly projected savings of \$1,375,000. Recurring costs of the current regulations for large mines are estimated to be \$168,035,000, while recurring costs of the proposed requirements for large mines are estimated to be \$162,075,000, a projected savings of \$5,960,000 per year.

In developing cost estimates, MSHA has taken into consideration industry-wide safety practices. Current compliance costs are related to the following requirements: labor, equipment purchase and maintenance, and recordkeeping. In calculating the costs of the proposed rule, the Agency projected initial compliance costs and annual recurring costs.

In the proposed rule, MSHA has reorganized, updated, and clarified existing provisions. The Agency has also proposed deleting existing duplicative provisions and replacing recordkeeping requirements with certification provisions and requirements for certifications and records of uncorrected hazardous conditions.

The primary benefit of the proposed rule is the protection that the standards would provide to miners who would be endangered by hazards related to methane accumulations and fires in underground coal mines.

Under the proposal, alternative compliance methods and a more performance-oriented approach would reduce compliance costs without diminishing the safety of persons who work at the Nation's mines.

The Agency specifically solicits comments and data on how the proposed regulations would impact the mining industry.

V. Paperwork Reduction Act

The proposal would reduce and simplify existing recordkeeping requirements for preshift and other examinations. Unlike the existing rule, which requires a record of the results of the examinations, the proposal would require a certification that the examination was made and a record which specifies uncorrected hazardous conditions and their locations. If a hazardous condition is corrected, or if no hazardous conditions are observed, no record of the condition would be required.

The proposal would eliminate the existing requirement that the mine foreman review and countersign records of examinations. It would continue to be the responsibility of the mine foreman to have known hazards corrected.

The existing rule contains extensive criteria for evaluating and approving ventilation plans. As a result, comprehensive and often complex ventilation plans are required for each mine. The proposal would retain the requirement that each mine have an approved ventilation plan that addresses ventilation practices at the mine and is suitable to mining conditions. However, it would reduce the scope of the plan by making

mandatory existing criteria that in the Agency's experience are applicable to all mines. Additionally, only revisions to ventilation plans would be required to be submitted once a ventilation plan is approved.

The proposed collection of information requirements contained in this Notice of Proposed Rulemaking have been submitted to the Office of Management and Budget (OMB) in accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (Title 44, U.S.C. Chapter 35). Comments regarding collecting of information requirements may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Mine Safety and Health Administration.

List of Subjects in 30 CFR Part 75

Mine safety and health, Mandatory safety standards, Underground coal mines, Ventilation, Escapeways, Boreholes in advance of mining, Mining into inaccessible areas.

January 21, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

It is proposed to amend Subparts A, D and R, Part 75, Subchapter I of Title 30 of the Code of Federal Regulations as follows:

PART 75—[AMENDED]

1. The authority citation for Part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, 961

2. In § 75.2, paragraph (h) is revised to read as follows:

Subpart A—General

§ 75.2 Definitions.

(h) "Worked-out area" means an area where mining has been completed, whether pillared or nonpillared, excluding developing entries, return air courses, and intake air courses.

3. In § 75.2, paragraphs (o), (p), (q) and (r) are added to read as follows:

§ 75.2 Definitions.

(o) "Permanent electrical equipment" means all electrical equipment, except communication and monitoring systems, self-propelled electrical equipment, and electrical equipment that is only energized and operated while attended.

(p) "Air course" means an entry or a set of entries separated from other entries by stoppings, overcasts, other ventilation control devices, or solid

blocks of coal or rock so that mixture of air currents between each is limited to leakage. For purposes of the examination required by § 75.364 of Subpart D, two adjacent entries or sets of entries with an open crosscut or crosscuts between them shall be considered separate air courses if the distance between open crosscuts is greater than 300 feet in seam heights below 48 inches and 600 feet in seam heights of 48 inches or above.

(q) "Intake air" means air which has not yet ventilated the last working place on any split of any working section or any worked-out area, whether pillared or nonpillared.

(r) "Return air," means air which has ventilated the last working place on any split of any working section or any worked-out area, whether pillared or nonpillared. When air mixes in a return air course with air which has ventilated the last working place on any split of any working section or any worked-out area, whether pillared or nonpillared, it is return air.

4. Subpart D, except for § 75.301-s2 which remains unchanged, is revised to read as follows:

Subpart D—Ventilation

Sec.

75.300 Mine ventilation.

75.310 Installation of main mine fans.

75.311 Main mine fan operation.

75.312 Main mine fan examinations and records.

75.313 Main mine fan stoppage with persons underground.

75.320 Air quality detectors and air measurement devices.

75.321 Air quality.

75.323 Actions for excessive methane.

75.324 Intentional changes in the ventilation system.

75.325 Air quantity.

75.326 Mean entry air velocity.

75.327 Trolley haulageways used as intake air courses.

75.330 Face ventilation control devices.

75.331 Auxiliary fans and tubing.

75.332 Working sections and working places.

75.333 Ventilation controls.

75.334 Worked-out areas and areas where pillars are being recovered.

75.335 Construction of seals.

75.340 Underground electrical installations.

75.341 Direct-fired intake air heaters.

75.342 Methane monitors.

75.343 Underground shops and stationary diesel equipment.

75.350 Belt conveyor entries.

75.351 Atmospheric monitoring system.

75.352 Return air courses.

75.360 Preshift examination.

75.361 Supplemental examination.

75.362 On-shift examination.

75.364 Weekly examination.

Sec.

- 75.365 Evaluation of return air courses developed before March 30, 1970.
 75.370 Mine ventilation plan submission and approval.
 75.371 Mine ventilation plan; contents.
 75.372 Mine ventilation map.

Subpart D—Ventilation**§ 75.300 Mine ventilation.**

Each underground coal mine shall be ventilated by one or more main mine fans. Booster fans shall not be installed in the mine ventilation system to assist main mine fans.

§ 75.310 Installation of main mine fans.

- (a) Each main mine fan shall be—
 (1) Installed on the surface in a fireproof housing;
 (2) Connected to the mine opening with fireproof air ducts;
 (3) Equipped with an automatic device that gives a signal which can be seen or heard when the fan slows or stops;
 (4) Equipped with a pressure recording device or a main fan monitoring system, except that for mines permitted to shut down main mine fans in accordance with § 75.371(i) of this part, an equally effective device for monitoring main mine fan pressure may be used;
 (5) Protected by one or more weak walls or explosion doors, or a combination of weak walls and explosion doors, located in direct line with possible explosive forces; and
 (6) Offset so that the fan and its associated components are not in direct line with possible explosive forces.
 (b)(1) When an electric motor is used to drive a main mine fan, the motor shall operate from a power circuit independent of all other mine power circuits. If the electric motor is not permissible, it shall not be located in the air current exhausting from the mine.
 (2) When an internal combustion engine is used to drive a main mine fan—
 (i) The fuel supply shall be protected against fires and explosions;
 (ii) The engine shall be installed in a fireproof housing and be equipped with a remote shut-down switch;
 (iii) The engine and the engine exhaust system shall be located out of direct line of the air current exhausting from the mine; and
 (iv) The engine exhaust shall be vented to the atmosphere so that the exhaust gases do not contaminate the mine intake air current or any enclosure.
 (c) If a main fan monitoring system is used, the system shall be capable of monitoring main mine fans and their associated components for proper operation and of recording mine

ventilating pressure. The system shall also be equipped with an automatic device that gives a signal to a surface location when—

- (1) An electrical or mechanical deficiency exists in the monitoring system; or
 (2) A sudden increase or loss of mine ventilating pressure occurs.
 (d) Weak walls and explosion doors shall have cross-sectional areas at least equal to that of the entry through which the pressure from an explosion underground would be relieved.
 (e) If a mine fan is installed in line with an entry, a slope, or a shaft—
 (1) The cross-sectional area of the pressure relief entry shall be at least equal to that of the fan entry;
 (2) The fan entry shall be developed out of direct line with possible explosive forces; and
 (3) The coal or other solid material between the pressure relief entry and the fan entry shall be at least 2,500 square feet.
 (f) In mines ventilated by multiple main mine fans, fireproof doors shall be installed on the fans so that if any main mine fan stops and air reversal through the fan is possible, the doors on the affected fan will automatically close.

§ 75.311 Main mine fan operation.

- (a) Main mine fans shall be continuously operated, except as specified in the ventilation plan, or when intentionally stopped for maintenance or adjustment.
 (b) When a main mine fan is intentionally stopped for maintenance or adjustment and the required ventilation is not maintained—
 (1) Only persons authorized by the operator who are necessary to evaluate the effect of the fan stoppage or restart, and authorized representatives of the Secretary, shall be permitted in the mine;
 (2) Mechanized equipment in the mine shall be shut off prior to stopping the fan; and
 (3) Electric power circuits entering underground areas of the mine shall be deenergized, if the fan is stopped for more than 30 minutes.
 (c) Electrical or mechanical deficiencies in a main mine fan shall be repaired promptly.
 (d) While persons are underground, a person designated by the operator shall be at a surface location at all times where each main fan signal device can be seen or heard.
 (e) The area within 100 feet of main mine fans and intake air openings shall not contain accumulations of combustible or flammable material, or other precautions necessary to provide

protection from fire or other products of combustion shall be specified in the ventilation plan.

§ 75.312 Main mine fan examinations and records.

- (a) Each main mine fan and its associated components shall be examined for proper operation by a person designated by the operator at least once each day during which the fan operates, unless a main fan monitoring system is used.
 (b)(1) When a main fan monitoring system is used, a person designated by the operator shall, at least every 7 days—
 (i) Test the monitoring system for proper operation; and
 (ii) Examine each main mine fan and its associated components.
 (2) If the monitoring system malfunctions, the malfunction shall be corrected, or a person designated by the operator shall examine each main mine fan and its associated components for proper operation at least once each day during which the fan operates.
 (c) At least every 30 days, the automatic fan signal device for each main mine fan shall be tested to determine whether it is working properly.
 (d) At least every 30 days, automatic closing doors in multiple main mine fan systems shall be tested for proper operation.
 (e) Circular mine fan pressure recording charts shall be changed before the beginning of a second revolution.
 (f) *Certification.* Persons performing main mine fan examinations shall certify by initials and date that the examinations were made. Each certification shall identify the main fan examined.
 (g) *Recordkeeping.* Persons performing main mine fan examinations shall record uncorrected defects that may affect the operation of the fan which are not corrected by the end of the shift on which the examination is made.
 (h) *Retention period.* Certifications and records, including records of mine fan pressure, shall be retained for at least one year at a surface location and made available to authorized representatives of the Secretary and representatives of miners.
§ 75.313 Main mine fan stoppage with persons underground.
 (a) When a main mine fan stops while any person is underground and the required ventilation is not maintained—

(1) Electrically powered equipment in each working section shall be deenergized;

(2) Other mechanized equipment in each working section shall be shut off; and

(3) Persons shall be withdrawn from working places.

(b) If ventilation is restored within 15 minutes after the main fan stops, certified persons shall examine for methane in the working places and in other areas where methane will accumulate before work is resumed and before equipment is energized in such areas.

(c) If ventilation is not restored within 15 minutes after the main fan stops—

(1) Persons shall be withdrawn from the mine;

(2) Underground electric power circuits shall be deenergized, except those circuits located in areas where air reversals are not likely to occur and that are necessary to withdraw persons from the mine, which shall be deenergized as persons are withdrawn;

(3) Mechanized equipment not located on working sections shall be shut off unless the equipment is located in areas where air reversals are not likely to occur, and the equipment is necessary to withdraw persons from the mine;

(4) Certified persons shall complete an examination for methane before underground power circuits are energized in an area; and

(5)(i) No person shall enter any underground area of the mine until an examination of the area is completed by a certified person and the area is determined to be safe.

(ii) If ventilation is restored to the mine before miners reach the surface, the miners may return to underground areas only after an examination of the areas is made by a certified person and the area is determined to be safe.

§ 75.320 Air quality detectors and air measurement devices.

(a) Tests for methane shall be made with approved detectors that are maintained in permissible and proper operating condition.

(b) Tests for oxygen deficiency shall be made with approved oxygen detectors that are maintained in permissible and proper operating condition.

(c) Devices that contain electrical components and that measure air velocity shall be used only if they are approved and maintained in permissible and proper operating condition.

(d) Devices that contain electrical components and that are used for measuring carbon monoxide, oxides of nitrogen and other harmful gases shall

be approved, and maintained in permissible and proper operating condition.

(e) Flame safety lamps shall not be taken into or used underground.

§ 75.321 Air quality.

(a) Areas where persons work or travel shall be ventilated by air containing at least 19.5 percent of oxygen and not more than 0.5 percent of carbon dioxide.

(b) Concentrations of explosive gases in air shall not exceed the following:

(1) Hydrogen (H_2)—.8 percent;

(2) Hydrogen sulfide (H_2S)—.8 percent;

(3) Ethane (C_2H_6)—.6 percent.

§ 75.323 Actions for excessive methane.

(a) These provisions shall apply when methane concentrations described in this section are detected at any location at least 12 inches from the roof, face, ribs and floor.

(b) When 1.0 percent of methane is present in a working place or an intake aircourse, including an aircourse in which a belt conveyor is located—

(1) Electrically powered equipment in the aircourse or in the affected working places shall be deenergized, and other mechanized equipment shall be shut off; and

(2) Changes or adjustments in ventilation or in the section mining cycle shall be made to reduce the concentration of methane to less than 1.0 percent.

(c) When 1.5 percent of methane is present in a working place or an intake aircourse, including an aircourse in which a belt conveyor is located—

(1) All persons shall be withdrawn from the affected area, except for those persons designated by the operator to take corrective action, and authorized representatives of the Secretary;

(2) Electric power to equipment in affected areas shall be disconnected at the power source; and

(3) Changes or adjustments in ventilation shall be made to reduce the concentration of methane to less than 1.0 percent.

(d) When 1.5 percent of methane is present in a return air split between the last working place on a working section and where that split of air meets another split of air, or the location at which such split is used to ventilate seals or worked-out areas—

(1) Electrically-powered equipment in the affected split shall be deenergized and other mechanized equipment shall be shut off; and

(2) Changes or adjustments in ventilation shall be made to reduce the

concentration of methane in the return air to less than 1.5 percent.

(e) When 2.0 percent of methane is present in a return air split between the last working place on a working section and where that split of air meets another split of air, seal, or worked-out area—

(1) All persons shall be withdrawn from the affected air split, except persons authorized by the operator to take corrective action, and authorized representatives of the Secretary;

(2) All electric power to equipment in the affected air split shall be disconnected at the power source; and

(3) Changes or adjustments in ventilation shall be made to reduce the concentration of methane in the return air to less than 1.5 percent.

(f) When 2.0 percent methane is present in a bleeder split of air just before the air in that split enters another split of air, or in a return air course other than as described in paragraphs (d) and (e) of this section, changes or adjustments in ventilation shall be made to reduce the concentration of methane to less than 2.0 percent.

§ 75.324 Intentional changes in the ventilation system.

Any intentional change in ventilation which materially affects the main air current or any split thereof, or which affects section ventilation by at least 9,000 cubic-feet-per-minute of air, shall be supervised by a person designated by the operator and shall be made only as follows:

(a) Electric power shall be removed from areas affected by the ventilation change, and mechanized equipment in those areas shall be shut off, before persons start to make the change.

(b) Only persons making the change in ventilation shall be permitted in the mine.

(c) Electric power shall not be restored to the areas affected by the ventilation change and mechanized equipment shall not be re-started until a certified person has examined such areas for methane and for oxygen deficiency and has determined that such areas are safe.

§ 75.325 Air quantity

(a) The quantity of air reaching the working face shall be greater than the operating volume of machine-mounted dust collectors and diffuser fans, unless otherwise specified in the ventilation plan.

(b)(1) In bituminous and lignite mines, the quantity of air shall be at least 3,000 cubic-feet-per-minute reaching each working face where coal is being cut, mined, drilled for blasting, or loaded,

unless a greater quantity is required in the ventilation plan.

(2) The quantity of air reaching the working face shall be measured at the face end of the line curtain or ventilation tubing. If the curtain or tubing extends beyond the last row of permanent roof supports, the quantity of air reaching the working face shall be measured behind the line curtain or in the ventilation tubing at the last row of permanent supports.

(c) In longwall mining systems, the quantity of air shall be at least 20,000 cubic-feet-per-minute reaching each working face, when measured in the intake entry or entries at the intake end of the longwall face immediately outby the face, unless a greater quantity is required in the ventilation plan.

(d) In anthracite mines, the quantity of air shall be as follows:

(1) At least 1,500 cubic-feet-per-minute reaching each working face where coal is being mined.

(2) At least 5,000 cubic-feet-per-minute passing through the last open crosscut in each set of entries or rooms and at the intake end of any pillar line.

(3) In robbing areas where air currents cannot be controlled and air measurements cannot be obtained, the air shall have perceptible movement.

§ 75.326 Mean entry air velocity.

In exhausting face ventilation systems, the minimum mean entry air velocity shall be at least 60 feet-per-minute, unless a lower velocity is specified in the ventilation plan that will maintain respirable dust concentrations below the applicable standard.

§ 75.327 Trolley haulageways used as intake air courses.

In intake air courses where trolley wires or trolley feeder wires are installed, the velocity of air shall be at least 50 feet-per-minute.

§ 75.330 Face ventilation control devices.

(a) Brattice cloth, ventilation tubing and other face ventilation control devices shall be made of flame-resistant material approved by the Secretary.

(b)(1) Ventilation control devices shall be used to provide ventilation to each working face from which coal is being cut, mined or loaded, and to other working places as specified in the ventilation plan.

(2) Such devices shall be installed at a distance specified in the ventilation plan that will maintain concentrations of respirable dust, methane, and other harmful gases below the applicable standards.

§ 75.331 Auxiliary fans and tubing.

(a) When auxiliary fans and tubing are used for face ventilation, each auxiliary fan shall be—

(1) Permissible;

(2) Maintained in proper operating condition;

(3) Deenergized when no person is present on the working section; and

(4) Located and operated to avoid recirculation of air.

(b) When a deficiency exists in any auxiliary fan system, or when the air passing through any auxiliary fan or tubing contains 1.0 percent of methane—

(1) The deficiency shall be corrected or the auxiliary fan shall be deenergized immediately; and

(2) Power to electrical equipment in the working place and to the auxiliary fan shall be deenergized, and other mechanized equipment shall be switched off, until the methane concentration is reduced to less than 1.0 percent.

(c) When an auxiliary fan is stopped, line brattice or other face ventilation control devices shall be used to maintain ventilation to the face.

§ 75.332 Working sections and working places.

(a)(1) Each working section shall be ventilated by a separate split of intake air.

(2) When two or more sets of mining equipment are simultaneously engaged in the production of material within the same working section, each set of mining equipment shall be on a separate split of intake air.

(b) Air that has passed through any worked-out area shall not be used to ventilate any working place.

(c) For purposes of this section, a set of mining equipment includes a single loading machine, a single continuous mining machine, or a single longwall or shortwall mining machine.

§ 75.333 Ventilation controls.

(a) Except in rooms that are 600 feet or less in depth from the centerline of the entry from which the room was developed, permanent stoppings shall be erected and maintained—

(1) Between intake air courses and return air courses to and including the fourth connecting crosscut outby each working face;

(2) To separate belt conveyor haulageways from return air courses to and including the fourth connecting crosscut outby each working face, except for areas of mines developed before March 30, 1970, where belt entries are used as return air courses; and

(3) To separate escapeways from belt, trolley haulage, and trolley feeder entries, as required by § 75.380(c)(3).

(b) Doors that provide access between all intake air courses, return air courses, and haulageways shall be installed as follows in permanent stoppings that separate air courses and haulageways that are constructed after (insert 30 days after the final rule becomes effective):

(1) The distance between doors shall be no more than 300 feet in seam heights below 48 inches and 600 feet in seam heights 48 inches or above.

(2) The location of doors in all escapeways shall be clearly marked so that the doors may be easily identified by persons traveling in the escapeway or in entries on either side of the doors.

(c)(1) Where airlock doors are installed so that machinery can travel from one aircourse to another, their locations shall be specified in the ventilation plan.

(2) When airlock doors are used, one door in each set of doors shall remain closed. When not in use, both doors shall be closed.

(d)(1) All overcasts, undercasts, shaft partitions, and permanent stoppings shall be constructed of durable and noncombustible material, such as concrete, concrete block, brick, cinder block, or tile. No ventilation controls installed after [insert 30 days after final rule becomes effective] shall be constructed of aluminum. Controls shall be maintained so that they serve the purpose for which they were built.

(2) When timbers are used to create stoppings in heaving or caving areas, they shall be coated on all accessible surfaces with fire resistant material having a flame spread index of not more than 25, as tested in accordance with ASTM E-162.

(3) Doors and door frames in stoppings, ventilation doors, and regulators shall be made of noncombustible material, or treated or coated with fire-resistant material on all accessible surfaces.

(4) For purposes of this section, "durable material" is material that is structurally equivalent to an 8-inch hollowcore concrete block stopping with mortared joints in accordance with ASTM E-72 Section 12—Traverse Load-Section Vertical. "Noncombustible material" is material that will continue to serve its purpose as a ventilation control when subjected to ASTM E-119 for one hour.

(e) When sealants are applied to ventilation controls, the sealant shall have a flame-spread index of not more than 25, as tested in accordance with ASTM E-162.

(f) Before mining is discontinued in an entry or room that is advanced in excess of 30 feet, a crosscut shall be made or line brattice shall be installed and maintained to provide adequate ventilation.

§ 75.334 Worked-out areas and areas where pillars are being recovered.

(a) Worked-out areas where no pillars have been recovered shall be ventilated so that gases from throughout the worked-out areas are routed into a return air course or to the surface of the mine, or they shall be sealed.

(b) During pillar recovery, a bleeder system shall be used to control the air passing through the area and to continuously dilute and move gases, dusts and fumes from all portions of the worked-out area, into a return air course or to the surface of the mine. After completion of pillar recovery, a bleeder system shall be maintained or the area shall be sealed.

(c) Bleeder systems shall include any one or combination of the following:

(1) Special aircourses designed, developed and maintained to continuously move air-methane mixtures from the worked-out areas into a return air course or to the surface of the mine.

(2) Methane drainage systems.

(3) Surface openings.

(4) Connectors between caved areas and special aircourses described in (c)(1).

(d) The bleeder system to be used shall be specified in the ventilation plan.

(e) If the bleeder system used does not continuously move gases, dusts, and fumes away from worked-out areas into a return air course or to the surface of the mine, or if the effectiveness of the bleeder system cannot be determined in accordance with § 75.364 of this part, the worked-out area shall be sealed.

(f) Each mining system shall be designed so that each worked-out area can be sealed.

§ 75.335 Construction of seals.

(a) Except as specified in paragraph (f) of this section, each seal shall be—

(1) Constructed of noncombustible material with mortar or equivalent fire-resistant material between all joints;

(2) Constructed in solid floor, roof, and ribs, and hitched at least one foot into the ribs; and

(3) Coated on all accessible surfaces with fire-resistant material that will minimize leakage.

(b) A sampling pipe or pipes shall be installed in each set of seals for a worked-out area. Each pipe shall—

(1) Extend into the sealed area for a sufficient distance to obtain a

representative sample from behind the seal, but in no case shall pipes extend less than 15 feet into the sealed area;

(2) Be equipped with a cap or shut-off valve; and

(3) Be installed with the sampling end of the pipe approximately 12 inches from the roof.

(c)(1) A corrosion-resistant water pipe or pipes shall be installed in seals at the low points of the area being sealed and at all other locations necessary to drain water from sealed areas; and

(2) Water traps shall be installed on the outby side of the lowest point of each set of seals.

(d) Seals shall be at least 16 inches thick. When the thickness of the seal is less than 24 inches and the width is greater than 16 feet, a pilaster shall be interlocked near the center of the seal.

(e) When timbers are used to create a seal in heaving or caving areas, they shall be coated on all accessible surfaces with fire resistant material having a flame-spread index of not more than 25, as tested in accordance with ASTM E-162.

(f) Alternate construction methods or materials may be used if they provide at least equivalent protection and are specified in the ventilation plan.

§ 75.340 Underground electrical installations.

(a)(1) Except as provided in paragraph (b) of this section, permanent electrical equipment shall be in fireproof structures or areas and shall be ventilated by intake air that is coursed directly into a return air course.

(2) Permanent electrical equipment may be located in a crosscut between an intake regulator and a return entry, provided that the quantity of intake air passing over the equipment is at least 5,000 cubic-feet-per-minute, the air passes directly into a return, and no part of the permanent electrical equipment extends into the return air course.

Where battery charging stations used for charging permissible equipment are ventilated in accordance with this section, including stations located on or advanced with working sections, no part of the station or the equipment being charged shall extend into the return air course.

(b) The intake air ventilating the following electrical equipment is not required to be coursed directly into a return air course:

(1) Rectifiers or power centers with transformers that are either dry-type or contain nonflammable liquid, provided that such rectifiers or power centers are moved as the working section advances or retreats.

(2) Power centers and dry-type transformers that are necessary for the operation of a belt conveyor and are located in an air course equipped with an early-warning fire detection system that meets the requirements of § 75.350 of this part.

(3) Rectifiers for trolley haulage systems, underground substations, power centers, permanent pumping stations provided that—

(i) They are housed in a fireproof structure equipped with fireproof doors and an automatic fire suppression system; and

(ii) When either the temperature in the fireproof structure reaches 165 degrees Fahrenheit, or when the carbon monoxide concentration reaches 15 ppm above the established ambient level for that area, the fireproof doors close, incoming power to the structure is deenergized, and a signal is activated at a surface location that can be seen or heard at all times while any person is underground. This surface location shall have access to two-way communication with affected working sections.

(c) Permissible pumps may be used in return aircourses.

§ 75.341 Direct-fired intake air heaters.

(a) If any component in systems used to heat intake air malfunctions, the heaters affected shall switch off automatically.

(b) Thermal overload devices shall protect the blower motor against overheating.

(c) The fuel supply shall turn off automatically if a flame-out occurs.

(d) A pressure switch or other device shall switch off the heaters when the volume of air entering the shaft, slope, or drift opening is reduced by 10 percent or more when persons are underground, except that steam exchange units may be shut down on a delayed basis.

(e) Each heater shall be located or guarded to prevent contact by persons.

(f) If intake air heaters use liquefied fuel systems:

(1) Hydrostatic relief valves installed on vaporizers and on storage tanks shall be vented;

(2) Fuel storage tanks shall be located or protected to prevent fuel from leaking into the mine.

§ 75.342 Methane monitors.

(a)(1) Methane monitors approved by the Secretary shall be installed on all face cutting machines, continuous miners, longwall face equipment, loading machines, and other equipment used to extract or load coal from the face.

(2) Methane monitors shall be maintained in permissible and proper operating condition.

(3) The sensing devices of methane monitors shall be installed as close to the working face as practicable.

(b) When the methane concentration at any methane monitor reaches 1.0 percent, the monitor shall give a warning signal.

(c) The methane monitor shall automatically deenergize the machine on which it is mounted when the methane concentration at the monitor reaches 2.0 percent.

§ 75.343 Underground shops and stationary diesel equipment.

Underground shops and stationary diesel equipment shall be equipped with an automatic fire suppression system or be enclosed in a fireproof structure or area, and shall be ventilated with intake air that is coursed directly into a return air course.

§ 75.350 Belt conveyor entries.

(a) The provisions of this section apply where conventional, continuous, or longwall mining methods are used, except when—

(1) Belt conveyors that are no longer than 600 feet are used on a working section to transport coal from the face in lieu of shuttle cars or other such haulage equipment; or

(2) Cross belt conveyors that are no longer than 600 feet are located on a working section.

(b) *Intake belt air used at a working place.* When intake air is coursed through a belt conveyor entry to ventilate a working place, the belt conveyor entry shall be—

(1) Equipped with an early-warning fire detection system consisting of carbon monoxide sensors installed and operated as specified in paragraphs (c)(1), (c)(2), and (c)(3) of § 75.351, and paragraphs (d) through (j) of this section;

(2) Separated by permanent stoppings from escapeways, as required by § 75.380(c)(3), and from return air courses; and

(3) Ventilated by an air current with a velocity of at least 50 feet-per-minute.

(c) *Intake belt air not used at a working place.* When intake air coursed through a belt conveyor entry is not used to ventilate a working place, the entry shall be separated by permanent stoppings from escapeways as required by § 75.380(c)(3), and from return air courses, and the intake air shall—

(1) Have a velocity of at least 50 feet-per-minute; and

(2) Be coursed directly into a return air course.

(d) *Fire-detection systems.* Early-warning fire detection systems shall—

(1) Monitor for circuit continuity and sensor function;

(2) Give a signal to a designated surface location at the mine when any deficiency exists in the system;

(3) Give a signal to affected working sections and to the designated surface location when the carbon monoxide concentration at any sensor reaches 10 parts-per-million (ppm) above the established ambient level for that area;

(4) Activate alarms at a designated surface location when the carbon monoxide concentration at any sensor reaches 15 ppm above the established ambient level for that area; and

(5) Identify at the designated surface location any activated or malfunctioning sensor.

(e) When the carbon monoxide concentration at any sensor reaches 10 ppm above the established ambient level for that area, all persons shall be withdrawn from the affected area.

(f) When the carbon monoxide concentration at any sensor reaches 15 ppm above the established ambient level for that area, the mine evacuation plan shall be implemented for all persons, except those persons required to determine the cause of the activation and to take corrective action.

(g) A person designated by the operator shall be at a surface location where the signals and alarms for the early-warning fire detection system can be seen or heard at all times while any person is underground. This person shall have access to two-way communication with persons on working sections and with other persons having identifiable duty stations. A mine map showing underground monitoring system components and their locations shall be posted at the surface location.

(h) If any portion of the early-warning fire detection system required by this section malfunctions or is deenergized, the affected belt conveyor shall be operated only when a qualified person having communication with a designated surface location patrols the affected area and monitors for carbon monoxide with a hand-held carbon monoxide detection device with a level of detection comparable to monitoring sensors, in the following manner:

(1) If one sensor becomes inoperative, a qualified person shall monitor at that location;

(2) If two or more adjacent sensors become inoperative, a qualified person shall patrol and monitor the area affected; and

(3) If the complete system becomes inoperative, a sufficient number of qualified persons shall patrol and

monitor so that the affected belt entry or entries are travelled each hour in their entirety, or qualified persons shall continuously monitor for carbon monoxide at the end of each belt conveyor flight. After the completion of the shift during which the system becomes inoperative, qualified persons shall continue to patrol the belt once each hour in its entirety, or qualified persons with hand-held monitors shall be stationed at each sensor.

(i)(1) Each carbon monoxide sensor shall be capable of detecting carbon monoxide in air at a level of ± 1 ppm throughout the operating range.

(2) At least once during each coal-producing shift, each carbon monoxide sensor shall be visually examined.

(j) *Recordkeeping.* When a signal device or alarm is activated, a record shall be made of the date, time, and carbon monoxide concentration at the sensor producing the signal and the reason for its activation.

(k) *Retention Period.* Records shall be retained for at least one year at a surface location at the mine and made available to authorized representatives of the Secretary and representatives of miners.

§ 75.351 Atmospheric monitoring system.

(a) An atmospheric monitoring system (AMS) shall consist of sensors to monitor the mine atmosphere and instruments at a surface location designated by the operator to receive information from the monitoring sensors.

(b) In mining systems where both escapeways are ventilated by the same continuous split of air as specified in the ventilation plan in accordance with § 75.380(c)(2), AMS sensors shall monitor the mine atmosphere for parts-per-million of carbon monoxide in the intake escapeway required to be ventilated by intake air, at a location adjacent to the section loading point, and at 2000 foot intervals for a distance of at least 6000 feet outby the section.

(c) Where used to monitor belt conveyor haulageways in accordance with § 75.362 of this part, AMS sensors shall monitor the mine atmosphere for percentage of methane and parts-per-million (ppm) of carbon monoxide at the following locations:

(1) Not more than 50 feet inby or outby—

(i) Each belt drive and each belt take-up; or

(ii) Each belt drive and take-up combination where the take-up is within 300 feet of the belt drive.

(2) Not more than 50 feet inby or outby the section belt tail-piece.

(3) At least every 2,000 feet along the belt conveyor haulageway.

(4) At the inby end of each track where a belt and track are isolated in the same aircourse.

(d) Where used to monitor return air splits, in accordance with § 75.362, AMS sensors shall monitor the mine atmosphere for percentage of methane and parts-per-million of carbon monoxide between the last working place, or longwall or shortwall face, ventilated by the air split and the junction with another air split, seal, or worked-out area.

(e) Where used in accordance with § 75.364 as a method of evaluating bleeder systems, and where AMS will be used in accordance with § 75.364 to monitor worked-out areas where no pillars have been recovered, AMS sensors shall be installed to monitor the mine atmosphere for percentage of methane and oxygen, and parts-per-million (ppm) of carbon monoxide where air from a worked-out area enters a return split of air and at other locations specified in the ventilation plan.

(f) When an AMS is used in accordance with this section, it shall monitor circuit continuity and sensor function, and shall give a signal to the designated surface location when—

(i)(1) Each carbon monoxide sensor shall be capable of detecting carbon monoxide in air at a level of ± 1 ppm throughout the operating range;

(2) Each methane sensor shall be capable of detecting one percent of methane in air with an accuracy of ± 0.2 percent of methane.

(3) Each oxygen sensor shall be capable of detecting 19.5 percent of oxygen in air with an accuracy of ± 0.2 percent of oxygen.

(j) *Recordkeeping.* When a signal device or alarm is activated, a record shall be made of the date, time, methane, oxygen, or carbon monoxide concentration at the sensor producing the signal and the reason for its activation.

(k) *Retention period.* Records shall be retained for at least one year at a surface location at the mine and made available to authorized representatives of the Secretary and representatives of miners.

§ 75.352 Return air courses.

Except for areas of a mine developed before March 30, 1970, the entries used as return air courses shall be separated from belt haulage entries.

§ 75.360 Preshift examination.

(a) Within 3 hours preceding the beginning of any shift and before any person on the oncoming shift, other than

certified persons conducting examinations required by Subpart D, enters any underground area of the mine, a certified person designated by the operator shall make a preshift examination.

(b) The person conducting the preshift examination shall examine for hazardous conditions and test for methane and oxygen deficiency at the following locations:

(1) Roadways and track haulageways where persons are scheduled to work or travel during the oncoming shift.

(2) Belt conveyors which will be used to transport persons during the oncoming shift, and the entries in which the belt conveyors are located.

(3) Working sections, working places, and ventilation controls on working sections.

(4) Approaches to worked-out areas in active workings;

(5) Seals along intake air courses.

(6) Entries or rooms driven off an intake air course, where intake air passes through or along these entries or rooms to a working section.

(7) Where unattended diesel equipment or an electrical installation, except electrical cables, will be energized during the shift.

(c) The person conducting the preshift examination shall measure the volume and velocity of air at the following locations:

(1) Where temporary ventilation controls are used in rooms that are 600 feet or less in depth, in the last open crosscut in the line of pillars containing the temporary controls that separate the intake air courses and the return air courses.

(2) In the last open crosscut of each set of entries or rooms on each working section in the line of pillars containing the permanent stoppings that separate the intake air courses and the return air courses.

(3) On a longwall or shortwall, in the intake entry or entries at the intake end of the shortwall or longwall face immediately outby the face and at locations along the face at least 50 feet from each end of the face.

(4) At the intake end of any pillar line—

(i) Where a single split of air is used, in the intake entry immediately outby the first open crosscut outby the line of pillars being mined; or

(ii) Where a split system is used, in the intake entries immediately outby the split point.

(d) Hazardous conditions in any area of the mine where persons will be required to work or travel shall be posted within a conspicuous warning sign where persons entering such area

will be required to pass. Only persons designated by the operator to correct the condition may enter a posted area.

(e) *Certification.* Persons performing a preshift examination shall certify by initials and date at each working place examined that the examination was made and note the time of the examination. In areas required to be examined outby a working section, the certified person shall certify by initials and date and note the time of examination at a sufficient number of locations to indicate that the entire area has been examined.

(f) *Recordkeeping.* A record of uncorrected hazardous conditions and their locations for each examination shall be made on the surface before any person, other than certified persons conducting examinations required by Subpart D, enters any underground area of the mine. The record shall be made by the person performing the examination or a person designated by the operator. If made by a person other than the examiner, the examiner shall verify the record by initials and date.

(g) *Retention period.* Records shall be retained for at least one year at a surface location at the mine and made available to authorized representatives of the Secretary and representatives of miners.

§ 75.361 Supplemental examination.

(a) Before any person enters an area in which a preshift examination has not been made, a certified person shall examine the area for hazardous conditions, determine whether the air is traveling in its proper course and at its normal volume and velocity, and test for methane and oxygen deficiency. This provision does not apply to—

(1) Certified persons conducting examinations required by Subpart D; and

(2) Persons, such as pumpmen and belt mechanics, who may make such examinations for themselves, if they are trained and qualified in the use of air quality detectors and air measurement devices.

(b) *Certification.* Certified persons performing supplemental examinations shall certify by initials and date at each working place examined that the examination was made and note the time of the examination. In areas required to be examined outby a working section, the certified person shall certify by initials and date and note the time of the examination at a sufficient number of locations to indicate that the entire area had been examined.

§ 75.362 On-shift examination.

(a) During each shift that coal is produced, a certified person designated by the operator shall examine each working section for hazardous conditions and test for methane and oxygen deficiency.

(b) During each shift that coal is produced, a qualified person shall examine for hazardous conditions along each belt conveyor haulageway where a belt conveyor is operated. This examination may be conducted at the same time as the preshift examination of belt conveyors and belt conveyor haulageways, provided that the examination is conducted by a certified person within three hours before the coming shift.

(c) Persons conducting the on-shift examination shall measure the volume and velocity of air at the following locations:

(1) Where temporary ventilation controls are used in rooms that are 600 feet or less in depth, in the last open crosscut in the line of pillars containing the temporary controls that separate the intake air courses and the return air courses.

(2) In the last open crosscut of each set of entries or rooms on each working section in the line of pillars containing the permanent stoppings that separate the intake air courses and the return air courses.

(3) On a longwall or shortwall, in the intake entry or entries at the intake end of the shortwall or longwall face immediately outby the face and at locations along the face at least 50 feet from each end of the face.

(4) At the intake end of any pillar line—

(i) Where a single split of air is used, in the intake entry immediately outby the first open crosscut outby the line of pillars being mined; or

(ii) Where a split system is used, in the intake entries immediately outby the split point.

(d) A qualified person shall make tests for methane in working places at the last permanent roof supports or, when shortwall or longwall mining systems are used, at the headgate and tailgate—

(1) Immediately before equipment is operated or energized in these areas; and

(2) At additional intervals during the operation of this equipment, if specified in the ventilation plan for the mine.

(e) During each shift that coal is produced and at intervals not exceeding 4 hours, tests for methane shall be made—

(1) By a qualified person or by an AMS along each belt conveyor

haulageway in which a belt conveyor is operating; and

(2) By a certified person or by an AMS in each return split of air on each working section between the last working place, shortwall or longwall face, ventilated by that air split and the junction with another air split, seal, or worked-out area.

(f) *Certification.* Persons performing on-shift examinations shall certify by initials and date at each working place examined that the examination was made and note the time of the examination.

(g) *Recordkeeping.* At or by the completion of each coal-producing shift, a record of uncorrected hazardous conditions and their locations shall be made for the on-shift examination. The record shall be made by the person performing the examination or a person designated by the operator. If made by a person other than the examiner, the examiner shall verify the record by initials and date.

(h) *Retention period.* Records shall be retained for at least one year at a surface location at the mine and made available to authorized representatives of the Secretary and representatives of miners.

§ 75.364 Weekly examination.

(a) *Worked-out areas.* At least every seven days, a certified person shall examine unsealed worked-out areas where no pillars have been recovered as follows:

(1) The worked-out area shall be traveled to the area of deepest penetration, unless an alternative method of effectively evaluating the ventilation of the area is specified in the ventilation plan.

(2) Measurements of methane and oxygen concentration, and tests to determine if the air is moving in its designated direction, shall be made at locations where the effectiveness of the ventilation system of the area can be determined.

(3) In lieu of weekly examination by a certified person, an AMS may be used.

(b) At least every seven days, a certified person shall evaluate the effectiveness of bleeder systems used in accordance with § 75.334 (b) and (c), in the following manner:

(1) Measurements of methane and oxygen concentration, and a test to determine if the air is moving in its designated direction, shall be made where air enters the worked-out area.

(2) Measurements of methane and oxygen concentration, and a test to determine if the air is moving in its designated direction, shall be made where air enters a return split of air.

(3)(i) Special air courses described in § 75.334(c)(1), if used, shall be traveled at least once each week to locations specified in the ventilation plan where measurement of methane and oxygen concentration, and a test to determine if the air is moving in its designated direction, can be made; or

(ii) Such special aircourses may be evaluated by an atmospheric monitoring system (AMS).

(c) *Hazardous conditions.* At least every seven days, an examination for hazardous conditions, including air velocity measurements and tests for methane, shall be made by a certified person designated by the operator at the following locations:

(1) In each intake air course to determine if there is proper ventilation in the entire air course;

(2) In each return air course to determine if there is proper ventilation in the entire air course, except for return air courses evaluated in accordance with § 75.365 of this part.

(3) In at least one air course in its entirety on the tailgate side of each longwall mining section, so that the entire air course is traveled.

(4) At each seal along return air courses.

(5) In each escapeway so that the entire escapeway is traveled.

(6) At regulators.

(d) The weekly examination may be conducted at the same time as the preshift and on-shift examinations.

(e)(1) The weekly examination is not required during any seven consecutive day period in which no person enters any underground area of the mine.

(2) Except for certified persons to make examinations, no person shall enter any underground area of the mine if a weekly examination has not been completed within the previous 7 days.

(f) *Certification.* Persons performing the weekly examinations shall certify by initials and date that the examination was made and note the time of the examination. Certifications and times shall appear at a sufficient number of locations to indicate that the entire area has been examined.

(g) *Recordkeeping.* At the completion of any shift during which a portion of a weekly examination is made, a record of corrected hazardous conditions and their locations shall be made. The record shall be made by the person performing the examination or a person designated by the operator. If made by a person other than the examiner, the examiner shall verify the record by initials and date.

(h) *Retention period.* Records shall be retained for at least one year at a

surface location at the mine and made available to authorized representatives of the Secretary and representatives of miners.

§ 75.365 Evaluation of return air courses developed before March 30, 1970.

(a) Return air courses may be evaluated in accordance with this section when such air courses—

(1) Were developed before March 30, 1970;

(2) Are unsafe for travel and cannot be examined as required by § 75.364 of this part; and

(3) Are identified in the ventilation plan for the mine.

(b) Air measurement stations for each return air course shall be established at locations where the quantity and quality of air entering, flowing through, and returning from each affected return air course can be determined.

(c) Air measurement stations and approaches to such stations shall be maintained in safe condition.

(d) At least once each day that coal is produced, the following measurements and tests shall be made at each air measurement station by certified persons designated by the operator or by an AMS:

(1) Measurements for the quality and velocity of air, including tests for methane and carbon monoxide.

(2) Tests to determine whether the air is traveling in the proper direction.

(e) An immediate investigation of affected areas shall be made when a measurement taken at an air measurement station shows—

(1) An increase in the methane concentration greater than 0.5 percent from the average methane concentration at that station during the previous seven days;

(2) A variation in air velocity greater than 10 percent from the average air velocity at that station during the previous seven days; or

(3) A change in the normal direction of any air current.

(f) *Certification.* Persons performing the evaluations shall certify by initials and date that the evaluation was made, and note the time of the evaluation at each air measurement station.

(g) *Recordkeeping.* A record of any uncorrected hazardous conditions and their locations shall be made by the person performing the evaluation.

(h) *Retention Period.* Records, including printouts from atmosphere monitoring systems, shall be retained for at least one year at a surface location at the mine and made available to authorized representatives of the Secretary and representatives of miners.

§ 75.370 Mine ventilation plan submission and approval.

(a)(1) Each mine operator shall develop and follow a ventilation plan, approved by the District Manager, that is suitable to the conditions and the mining system to be used at the mine.

(2) The proposed ventilation plan and any revision to the plan shall be submitted in writing to the District Manager. When revisions to a ventilation plan are proposed, only the revised pages, maps, or sketches of the plan need to be submitted, unless otherwise specified by the District Manager. A copy of the proposed ventilation plan and any revision to the plan shall be provided to the representative of miners.

(3) The mine operator and the representative of miners may submit additional information in writing to the District Manager, and upon request, shall be provided an opportunity to meet with the District Manager to discuss the plan. The operator or representative of miners submitting additional information shall provide a copy of such information to the other party.

(b)(1) The District Manager will notify the mine operator and miners' representative in writing of the approval or denial of approval of a proposed ventilation plan or proposed revision.

(2) When approval of a proposed plan or revision is denied, the deficiencies of the plan or revision and recommended changes will be specified and the mine operator and representative of miners will be provided an opportunity to discuss the deficiencies and changes with the District Manager.

(c)(1) The operator shall have an opportunity to appeal the District Manager's decision on the disputed plan provisions to the Administrator for Coal Mine Safety and Health within 30 days of receipt of the District Manager's notification of denial of approval. The operator shall notify the Administrator in writing of the reasons for disagreeing with the District Manager. A copy of the appeal shall be provided by the operator to the representative of miners.

(2) Within 30 days of receipt of a copy of the operator's appeal, the representative of miners may submit additional information in writing to the Administrator. The representative of miners shall provide a copy of any such written information to the operator.

(3) After reviewing the appeal, including information submitted by all parties, the Administrator will issue a decision on the disputed plan provisions. The Administrator's decision shall be final.

(d) No proposed ventilation plan or revision to a ventilation plan shall be implemented before it is approved.

(e) Before implementing an approved revision to a ventilation plan, all persons who are affected by the revision shall be instructed in its provisions.

(f) The approved ventilation plan and any revisions shall be available to the miners and representatives of miners.

(g) The ventilation plan for each mine shall be reviewed every six months by an authorized representative of the Secretary.

(h) Existing ventilation plans that conflict with this Subpart D shall be revised to meet the requirements of this Subpart D by (insert date 6 months after the effective date of this rule). This paragraph (h) shall expire (insert date one year after effective date of this rule.)

§ 75.371 Mine ventilation plan; contents.

The mine ventilation plan shall include the information described below and any additional measures required by the District Manager.

(a) The mine name, company name, mine identification number, and phone number at the mine.

(b) The four-digit MSHA identification number for each mechanized mining unit (MMU).

(c) Face ventilation systems used and drawings illustrating how such systems are used on the working section, and a description of the dust suppression system used on each piece of equipment on the working section.

(d) The methane control systems and respirable dust control systems at underground dumps, crushers, and transfer points.

(e) Where methane drainage systems are used, a sketch of each system.

(f) The type, model, and manufacturer of monitoring systems used.

(g) The locations where designated area samples will be collected, and the respirable dust control systems used at the dust generating sources for these locations.

(h) Methods of protecting main mine fans, if combustible or flammable material is to be within 100 feet of the area surrounding the fan.

(i) Planned main mine fan stoppages other than those scheduled for maintenance and adjustment, procedures to be followed during the stoppages, and, in accordance with § 75.310 of this part, the type of device to be used for monitoring main mine fan pressure, if other than a pressure recording device or a main fan monitoring system.

(j) The volume and velocity of air at the locations for air volume and velocity

measurements specified in § 75.360 and § 75.362 of this part.

(k) The minimum quantity of air reaching each working face, if the quantity will not be greater than the operating volume of machine mounted dust collectors and diffuser fans.

(l) Locations where the air quantities will be required to be greater than those specified in § 75.325 of this part, and the quantities at those locations.

(m) The minimum quantity of air in each working section where diesel powered equipment is used.

(n) The minimum mean entry air velocity in exhausting face ventilation systems, if the velocity will be less than 60 feet-per-minute.

(o) The distance from each working face at which face ventilation control devices will be maintained.

(p) The method to be used to ventilate worked-out areas during and after pillar recovery.

(q) The locations where measurements of oxygen, methane and direction of airflow will be made to evaluate special air courses used as bleeder systems.

(r) A description of the construction methods to be used to seal worked-out areas if those methods will be different than those specified by § 75.335 of this part.

(s) The location of airlock doors.

(t) The ambient level in parts-per-million (ppm) of carbon monoxide, and the method for determining the ambient level, in all areas where early-warning fire detection systems are used, and where AMS are used.

(u) The location of AMS sensors installed to monitor worked-out areas for methane, oxygen, and carbon monoxide.

(v) Locations where on-shift tests for methane will be made in addition to those required by § 75.362(d) of this part, and the intervals between tests.

(w) The method of evaluation of worked-out areas where no pillars have been recovered, in lieu of weekly travel to the area of deepest penetration.

(x) Return air courses developed before March 30, 1970, that will be evaluated in accordance with § 75.364 of this part.

(y) Areas of mines developed after (insert 30 days after final rule becomes effective) where designated escapeways will not be ventilated with separate splits of intake air.

(z) Procedures to be used for planned mining into abandoned areas, in accordance with § 75.1702 of this part.

§ 75.372 Mine ventilation map.

(a) At least once every 12 months, the operator shall submit to the District

Manager 3 copies of an up-to-date map of the mine drawn to a scale of not less than 100 nor more than 500 feet to the inch. A responsible company official shall certify that the information on the map is accurate.

(b) The map shall show the following information:

(1) The mine name, company name, mine identification number, and legend identifying the scale of the map and symbols used.

(2) All known mine workings on mine property that are located in the same coalbed, and all other known mine workings in the same coalbed that are within 200 feet of existing or projected workings. These workings may be shown on a mine map with a scale other than that required by paragraph (a) of this section, provided that the scale does not exceed 2,000 feet to the inch.

(3) The locations of all known mine workings underlying and overlying the mine property and the distance between the mine workings.

(4) The locations of all known oil and gas wells and all known drill holes that penetrate the coalbed being mined.

(5) The locations of all main mine fans, stand-by fans and motors, and each fan's specifications, including size, type, model number, manufacturer, operating pressure, motor horsepower and revolutions per minute.

(6) The locations of all surface mine openings, the direction and quantity of air measured at each opening, and the methane concentration in air at all openings where air is leaving the mine.

(7) The elevation at the top and bottom of each shaft and slope, and shaft and slope dimensions, including depth and length.

(8) The direction of airflow in all underground areas of the mine.

(9) The locations of all ventilation controls, including permanent stoppings, overcasts, undercasts, regulators, seals, airlock doors, haulageway doors and other doors, except for temporary ventilation controls on working sections.

(10) The direction and quantity of air in each active working section—

(i) Entering and leaving each split;

(ii) In the last open crosscut of each set of entries and rooms; and

(iii) At the intake end of each pillar line, including any shortwall and longwall.

(11) Projections for at least 12 months of anticipated mine development, proposed ventilation controls, and proposed methane drainage systems.

(12) The locations of existing methane drainage systems.

(13) The locations of existing air measurement stations and evaluation points.

(14) The locations of all carbon monoxide and methane sensors.

(15) The locations where sampling devices will be placed to collect designated area samples.

(16) Contour lines or elevations sufficient to accurately indicate the dips and rises of the coalbed being mined.

(17) The location of proposed seals for each worked-out area.

(c) The mine map required by § 75.1200 of this part may be used to satisfy the requirements for the ventilation map, provided that all the information required by this section is contained on the map.

5. In Subpart R §§ 75.1704 through 75.1707 are redesignated as §§ 75.380 through 75.385 in Subpart D and revised to read as set forth below:

§ 75.380 Escapeways.

(a) Except in situations addressed by §§ 75.384 and 75.385, at least two separate and distinct travelable passageways shall be designated as escapeways and shall be:

(1) Provided from each working section continuous to the surface or to escape shaft or slope facilities to the surface;

(2) Maintained in a safe condition to ensure passage at all times of any person, including disabled persons;

(3) Clearly marked to indicate the route of travel to the surface;

(4) Maintained to at least a height of 5 feet from the mine floor to the mine roof, including the thickness of any roof support, except that the escapeways shall be maintained to at least the height of the coalbed where the coalbed is less than 5 feet;

(5) Maintained at least 4 feet wide;

(6) Located to follow the most direct and safe practical route to the surface; and

(7) Provided with ladders, stairways, ramps or similar facilities where the escapeways cross over obstructions.

(b) Multiple compartment shafts or slopes separated by walls constructed of noncombustible material may be used as separate and distinct passageways.

(c)(1) Designated escapeways shall be ventilated with separate splits of intake air—

(i) In mines opened after (insert 30 days after final rule becomes effective); and

(ii) In areas of mines developed after (insert 30 days after final rule becomes effective), except as specified in the ventilation plan for areas where separate splits of intake air cannot be provided. In no case shall such areas have less than one escapeway ventilated with intake air.

(2) At least one designated escapeway shall be ventilated with intake air in areas of mines developed prior to (insert 30 days after the final rule becomes effective).

(3) Except where separation of belt and trolley haulage entries from designated intake escapeways did not exist prior to (insert 30 days after the final rule becomes effective), one designated intake escapeway shall be separated from belt and trolley haulage entries for the entire length of such entries to and including the fourth connecting crosscut outby each working face.

(4) In areas of mines developed after (insert 30 days after the final rule becomes effective), at least one designated escapeway from each working section, ventilated with intake air, shall contain no permanent electrical equipment or diesel equipment outby working panels except—

(i) Equipment necessary to maintain the escapeway in safe, travelable condition;

(ii) Haulage equipment, other than belts and trolley haulage, necessary for the transportation of persons and materials; and

(iii) Underground substations, power centers, and permanent pumping stations that are housed in fireproof structures equipped with fireproof doors and an automatic fire suppression system.

(d) Mechanical escape facilities shall be:

(1) Provided and maintained for each shaft that is part of a designated escapeway and is greater than 50 feet in depth; and

(2) Provided and maintained for each slope that is part of a designated escapeway, and is either inclined 9 degrees or more from the horizontal, or is 500 feet or more in length.

(e) Within 30 minutes after mine personnel on the surface have been notified of an emergency requiring evacuation, mechanical escape facilities shall be operational at the bottom of each shaft and slope opening that is part of a designated escapeway.

(f) The bottom of each shaft or slope opening that is part of a designated escapeway shall be equipped with a means of signalling a surface location where a person is always on duty when persons are underground. When the signal is activated or the evacuation of personnel is necessary, such person shall take appropriate action to ensure that mechanical escape facilities are operational as required by paragraph (e) of this section.

(g)(1) Stairways or mechanical escape facilities shall be installed in shafts that

are part of the designated escapeways and that are 50 feet or less in depth, except ladders may be used in shafts that are part of the designated escapeways and that are 5 feet or less in depth;

(2) Stairways shall be constructed of concrete or metal, set on an angle not to exceed 45 degrees from the horizontal, and equipped on the open side with handrails. In addition, landing platforms that are at least 2 feet by 4 feet shall be installed at intervals not to exceed 10 vertical feet on such stairways and equipped on the open side with handrails.

(3) Ladders shall be constructed of metal, anchored securely, and set on an angle not to exceed 60 degrees from the horizontal.

(h) A travelway designed to prevent slippage shall be provided in slope and drift openings that are part of designated escapeways, and shall be inclined less than 9 degrees from the horizontal, and less than 500 feet in length, unless mechanical escape facilities are installed.

§ 75.381 Mechanical escape facilities.

(a) Mechanical escape facilities shall be provided with overspeed, overwind, and automatic stop controls.

(b) Every mechanical escape facility handling a platform, cage, or other device shall be equipped with brakes capable of stopping the fully loaded platform, cage, or other device.

(c) Mechanical escape facilities, including automatic elevators, shall be examined weekly. The weekly examination of such equipment may be conducted at the same time as a daily examination required by § 75.1400-3 of this part.

(1) The weekly examination shall include an examination of the headgear, connections, links and chains, and other facilities.

(2) At least once each week, the hoist shall be run by a qualified hoisting engineer through one complete cycle of operation.

(d) A qualified hoisting engineer shall be on duty while any person is underground. No such engineer, however, shall be required for automatically operated cages, platforms, or elevators.

(e) Mechanical escape facilities shall have rated capacities consistent with the loads handled.

(f) Mechanical escape facilities shall be equipped with indicators that accurately and reliably indicate the position of the facility.

§ 75.382 Escapeway maps and drills.

(a) A map shall be posted in each working section and shall show the designated escapeways from the working section to the location where such section escapeways intersect the main escapeways. A map showing the main escapeways shall be posted at a surface location of the mine where miners congregate, such as the mine bulletin board, bathhouse or waiting room. All maps shall be kept up-to-date, and any changes in route of travel, locations of any doors, or directions of airflow shall be shown on the maps by the end of the shift on which such changes are made and affected miners shall be informed of such changes before entering the underground areas of the mine.

(b)(1) At least once every 90 days, each miner, including miners with working stations located between working sections and main escapeways, shall participate in a practice escapeway drill and shall travel each escapeway from his or her working section or station to the main escapeways.

(2) At least once every six weeks and for each shift, at least two miners on each coal producing working section, accompanied by the section supervisor, shall participate in a practice escapeway drill and travel the designated escapeways from the section escapeways to the surface.

(3) Before or during practice escapeway drills, miners shall be informed of the locations of fire doors, check curtains, smoke-retarding doors, changes in the routes of travel, and of plans of diverting smoke from escapeways.

(c) The practice escapeway drills may be utilized to satisfy the evacuation specifications of the fire drills required by § 75.1101-23.

§ 75.383 Shortwall and longwall travelways.

When shortwall or longwall systems of mining are used, and the two designated escapeways required by § 75.380 are located on one side of the block of coal being mined, a travelway shall be provided on the other side of that block of coal. The travelway shall be located to follow the most direct and safe practical route to a designated escapeway, and the route of travel shall be clearly marked if more than one entry is used to provide the travelway.

§ 75.384 Opening new mines.

When new coal mines are opened, not more than 20 miners shall be allowed at any one time in any mine until a

connection has been made between the mine openings, and such connections shall be made as soon as possible.

§ 75.385 Final mining of pillars.

When only one mine opening is available due to final mining of pillars, not more than 20 miners shall be allowed in the mine at any one time, and the distance between the mine opening and working face shall not exceed 500 feet.

6. In Subpart R, § 75.1701 is revised and § 75.1701-1 is added to read as follows:

§ 75.1701 Boreholes in advance of mining.

(a) Boreholes shall be drilled in each advancing working place when such place approaches—

(1) To within fifty feet of any inaccessible area located in the same coalbed in the mine, that has been surveyed and certified by an engineer or surveyor who is registered in the State in which the mine is located;

(2) To within 200 feet of any inaccessible area located in the same coalbed in the mine, that has not been surveyed and certified by an engineer or surveyor who is registered in the State in which the mine is located; and

(3) To within 200 feet of any mine workings of an adjacent mine located in the same coalbed, which have not been examined during the previous 7 days.

(b) Boreholes shall be drilled as follows:

(1) Into the working face, parallel to the rib and within 3 feet of each rib.

(2) Into the working face, parallel to the rib and at intervals across the face not to exceed 8 feet.

(3) At least 20 feet in depth in advance of the working face before mining begins, and maintained at all times to a

distance of 10 feet in advance of the working face.

(c) Boreholes shall be drilled in at least one rib of advancing working places described in paragraph (a) of this section. These boreholes shall be drilled—

(1) At an angle of 45 degrees to the direction of advance;

(2) At least 20 feet in depth; and

(3) At intervals not to exceed 8 feet.

(d) When a borehole penetrates an area that cannot be examined, and before mining continues, a certified person shall, if possible, determine—

(1) The direction of airflow in the borehole;

(2) The pressure differential between the penetrated area and the mine workings;

(3) The concentrations of methane, oxygen, carbon monoxide, and carbon dioxide; and

(4) Whether water is impounded within the penetrated area.

(e) Unless action is taken to dewater or to ventilate penetrated areas, boreholes shall be plugged with wooden plugs or similar devices when—

(1) Tests conducted at the boreholes indicate that the atmosphere in the penetrated area contains more than 1.0 volume percent of methane, less than 19.5 percent of oxygen, or contains harmful concentrations of carbon monoxide, carbon dioxide or other explosive, harmful or noxious gases;

(2) Tests for methane, oxygen, carbon monoxide, and carbon monoxide cannot be made because air from mine workings is flowing into the penetrated area; or

(3) Water is discharging through the boreholes from the penetrated area into the mine workings.

§ 75.1701-1 Mining into inaccessible areas.

(a)(1) Mining shall not resume into any area penetrated by boreholes until conditions in the penetrated area can be determined in accordance with § 75.1701 of this part, and procedures for mining-through into the area have been specified in the ventilation plan.

(2) A copy of the procedures to be followed shall be posted near the site of the mining-through operations and the operator shall explain these procedures to all miners involved in such operations.

(b) The procedures specified in the plan shall include:

(1) The method of ventilation, ventilation controls, and the air quantities and velocities in the affected working section and working place;

(2) Dewatering procedures to be used if a penetrated area contains a water accumulation; and

(3) The procedures and safety precautions to be followed during mining-through operations.

(c)(1) Prior to and during mining-through operations, a certified person shall perform air quality tests at intervals and at locations necessary to protect the safety of the miners;

(2) During mining-through operations, only persons involved in these operations shall be permitted in the mine; and

(3) After mining through, a certified person shall determine that the affected areas are safe before any persons enter the underground area of the mine.

[FR Doc. 88-1606 Filed 1-26-88; 8:45 am]

BILLING CODE 4510-43-M

Estimote Federal Reporter

Wednesday
January 27, 1988

Part IV

Department of Justice

Immigration and Naturalization Service

8 CFR Part 1, etc.

Marriage Fraud Amendment Regulations; Proposed Rule

DEPARTMENT OF JUSTICE**Immigration and Naturalization Service**

8 CFR Parts 1, 204, 205, 211, 212, 214, 216, 223, 223a, 235, 242, and 245

Marriage Fraud Amendment Regulations

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: The Immigration Marriage Fraud Amendments of 1986 (Pub. L. 99-639) became effective on November 10, 1986. Pub. L. 99-639 provides for conditional permanent resident status for certain alien spouses, sons and daughters of United States citizens and lawful permanent residents. It also provides for the removal of the conditional basis of such residence upon the filing of a joint petition by the conditional resident and the petitioning spouse. Additionally, the law provides for the termination of an alien's lawful permanent residence for failure to file the necessary petition or for other reasons. This rulemaking proposes regulations necessary for the implementation of the law.

DATES: Written comments must be submitted on or before February 26, 1988.

ADDRESS: Please submit comments in triplicate to the Director, Office of Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-3946.

SUPPLEMENTARY INFORMATION: Historically, United States immigration policy has recognized the importance of protecting nuclear families from separation by permitting immediate family members of United States citizens to immigrate to the United States without numerical limitation. Similarly, the law has long set aside a significant number of immigrant visas for immediate relatives of permanent resident aliens. Because of the special status accorded such alien relatives, some aliens who cannot otherwise qualify for immigration to the United States have found it expedient to engage in fraudulent marriages in order to gain an immigration benefit.

Studies conducted by the Immigration and Naturalization Service have

revealed that an estimated 30% of all spousal petitions for immigration involve suspect marital relationships. Although participating in a fraudulent marriage makes an individual subject to both criminal and administrative sanctions, in the past it has been difficult to detect such fraud, to prosecute individuals engaged in such fraud and to deport the alien beneficiaries of such fraud. Recognizing both the extent of the fraud and the difficulties which exist in combatting such fraud, Congress enacted the Marriage Fraud Amendments Act of 1986 (Pub. L. 99-639), which addresses these problems in a number of ways.

First, section 2(a) of Pub. L. 99-639 creates a conditional basis of lawful permanent residence for aliens obtaining permanent residence within two years of marriage to a United States citizen or lawful permanent resident. It provides that the conditional basis shall be placed on the alien's permanent residence for a period of two years, and establishes a procedure by which the alien may seek removal of the conditions at the end of the two-year period. It further permits the revocation of an alien's permanent resident status under any of three conditions:

(1) If it is determined within the two-year period that the marriage was entered into for the purpose of obtaining an immigration benefit or has been judicially annulled or terminated, or that a fee or other consideration was given for the filing of a petition for an immigration benefit;

(2) If the alien and his/her spouse fail to file a joint petition for removal of the conditional status within the 90 days immediately preceding the second anniversary of the alien's having obtained conditional permanent residence, although such failure may be excused; or

(3) If the petition to remove the conditional basis of the alien's resident status is denied.

Second, section 2(b) of Pub. L. 99-639 provides for the deportation of an alien whose permanent resident status is revoked.

Third, section 4(a) of Pub. L. 99-639 precludes the approval of a petition filed on behalf of an alien who has conspired to engage in a fraudulent marriage or who has attempted to obtain an immigration benefit on the basis of such marriage.

Fourth, section 5 of Pub. L. 99-639 prevents an alien against whom an administrative or judicial proceeding is pending concerning his or her right to enter or remain in the United States from obtaining an immigrant benefit on

the basis of a marriage occurring during such proceedings.

Fifth, section 2(c) of Pub. L. 99-639 precludes the approval of a spousal immigrant visa petition filed by an alien who obtained permanent residence through marriage unless:

(1) The alien petitioner has been a permanent resident for at least five years; or,

(2) The alien establishes by clear and convincing evidence that the prior marriage was not entered into for the purpose of evading immigration laws; or,

(3) The alien's prior marriage was terminated through the death of his/her spouse.

Sixth, section 2(d) of Pub. L. 99-639 provides for criminal penalties for individuals who are convicted of having engaged in a fraudulent marriage.

Seventh, section 3(a) of Pub. L. 99-639 requires that the petitioner and beneficiary of a Petition to Classify Status of Alien Fiance or Fiancee for Issuance of Nonimmigrant Visa (Form I-129F) have met within the two-year period immediately preceding the filing of the petition, unless such requirement is waived.

Eighth, section 3(c) of Pub. L. 99-639 requires that an alien fiance or fiancee of a United States citizen must apply for permanent residence through the normal adjustment procedures contained in section 245 of the Immigration and Nationality Act, as amended (the Act), instead of the automatic procedures formerly contained in section 214(d) of the Act.

Ninth, sections 2(e) and 3(b) of Pub. L. 99-639 create a new subsection, 245(d), which precludes an alien who obtained conditional permanent residence as the spouse of a citizen or lawful permanent resident from adjusting status on any other basis. It also precludes an alien who entered the United States as a nonimmigrant under section 101(a)(15)(K) of the Act and failed to marry the citizen petitioner from obtaining permanent residence on any other basis.

In addition to creating new regulations, this rulemaking revises existing regulations, including those sections relating to:

(1) Revocation of visa petitions to allow for revocation of petitions approved contrary to the provisions of Pub. L. 99-639,

(2) Documentary requirements for immigrants to permit the readmission of an otherwise eligible conditional resident,

(3) Reentry permits and refugee travel documents to allow issuance of such documentation to conditional residents,

(4) Admission of aliens to provide procedures for the admission or readmission of conditional residents, and

(5) Deportation proceedings to provide for cancellation of an Order to Show Cause under certain circumstances and to specify the conditions under which an immigration judge shall grant conditional residence in a deportation hearing.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

This rule contains information collection requirements under the Paperwork Reduction Act which have been or will be submitted to the Office of Management and Budget.

List of Subjects

8 CFR Part 1

Administrative practice and procedure, Immigration.

8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 205

Administrative practice and procedure, Immigration.

8 CFR Part 211

Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passport and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 216

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 223

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 223a

Immigration, Refugees, Reporting and recordkeeping requirements.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 242

Administrative practice and procedure, Aliens.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, Title I of Chapter 8 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 1—DEFINITIONS

1. The authority citation for Part 1 is revised to read as follows:

Authority: 66 Stat. 173; 8 U.S.C. 1101; 28 U.S.C. 509, 510; 5 U.S.C. 301.

2. In § 1.1, new paragraph (c) is added to read as follows:

§ 1.1 Definitions.

(c) The term "director" means either district director or regional service center director, unless otherwise specified.

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

3. The authority citation for Part 204 is revised to read as follows:

Authority: 66 Stat. 166, 173, 175, 178, 179, 182, 217, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255.

4. In § 204.1 existing paragraphs (a)(2) through (a)(4) are redesignated (a)(3) through (a)(5), respectively, and a new paragraph (a)(2) is added to read as follows:

§ 204.1 Petition.

(a) * * *

(2) *Ineligible alien petitioners and beneficiaries*—(i) The Service may not approve a spousal second preference petition filed by an alien who, by virtue of a prior marriage, has been accorded the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the United States or as the spouse of an alien lawfully admitted for permanent residence unless:

(A) A period of five years has elapsed after the date the alien acquired permanent resident status; or

(B) The alien establishes by clear and convincing evidence that the prior marriage (on the basis of which the alien obtained lawful permanent resident status) was not entered into for the

purpose of evading the immigration laws; or

(C) The marriage through which the petitioner obtained permanent residence was terminated through the death of the petitioner's spouse.

(ii) In determining whether the petitioner has met the burden of establishing that the marriage through which he or she obtained permanent residence was not entered into for the purpose of evading immigration laws, the director shall take into account such factors as the length of time the petitioner and the prior spouse resided together, the existence of children born of the marriage, joint ownership of assets and assumption of liabilities, the grounds for which the marriage was terminated and other factors which the director may deem relevant. Because section 204(a)(2)(A)(ii) of the Act places the burden on the petitioner to establish "by clear and convincing evidence" that the prior marriage was not entered into for the purpose of evading the immigration laws, any reasonable doubts in the matter must be resolved by the petitioner. Failure to resolve such doubts may result in the denial of the petition; however, such a denial will be without prejudice to the filing of a new petition once the petitioner has acquired five years of lawful permanent residence. The director may choose to initiate deportation proceedings against the petitioner based upon information gained through the adjudication of the petition, but failure to initiate such proceedings shall not establish that the petitioner's prior marriage was not for the purpose of evading immigration laws. Unless the petition is approved, the beneficiary shall not be accorded a filing date within the meaning of section 203(c) of the Act based upon any spousal second preference petition filed within the prohibited period.

(iii) The Service may not approve a visa petition filed on behalf of an alien by a United States citizen or lawful permanent resident spouse, which is based upon a marriage occurring after November 10, 1986 and while the alien is in either exclusion, deportation or rescission proceedings or judicial proceedings relating thereto, until the alien has resided outside the United States for a two-year period after the date of the marriage. The period during which the alien is in such proceedings commences with the issuance of the Order to Show Cause (Form I-221) or Notice to Applicant for Admission Detained for Hearing before Special Inquiry Officer (Form I-122), or Notice of Intent to Rescind, as appropriate, and terminates when the alien departs from

the United States or is found not to be excludable or deportable from the United States, or if the order to show cause or Form I-122 is cancelled by the district director or terminated by the immigration judge. Any petition filed during this period shall be denied without prejudice to the filing of a new petition once the beneficiary has resided outside the United States for the required period of two years following the marriage. Furthermore, any such denial shall be without prejudice to the reopening of petition proceedings should the beneficiary be found not deportable or excludable from the United States, or if the order to show cause or notice of hearing is cancelled by the district director or immigration judge. The beneficiary shall not be accorded a filing date within the meaning of section 203(c) of the Act based upon any spousal petition filed within the prohibited period.

(iv) Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director shall deny any immigrant visa petition for immigrant visa classification filed on behalf of such alien, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt of conspiracy, the evidence of such attempt or conspiracy must be documented in the alien's file. The decision of the director to deny the petition may be appealed in accordance with Part 3 of this chapter.

5. § 204.1, existing paragraphs (d)(2)-(d)(4) are redesignated as (d)(3) through (d)(5), respectively, and a new paragraph (d)(2) is added to read as follows:

§ 204.1 Petition.

(d) * * *

(2) *Ineligible beneficiaries.* Section 204(c) of the Act prohibits the approval of an immigrant visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director shall deny any petition filed on behalf of such alien, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of such attempt or conspiracy must be documented in the alien's file. The

decision of the director to deny the petition may be appealed in accordance with Part 3 of this chapter.

* * * * *

PART 205—REVOCATION OF APPROVAL OF PETITIONS

6. The authority citation for Part 205 is revised to read as follows:

Authority: 66 Stat. 166, 173, 175, 178, 179, 180, 182, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, 1186a.

7. In § 205.1, a new paragraph (a)(10) is added to read as follows:

§ 205.1 Automatic revocation.

(a) * * *

(10) Upon a determination by the Service that it has approved a spousal immigrant visa petition based upon a marriage entered into while the beneficiary was under exclusion, deportation or rescission proceedings and prior to the beneficiary's having resided outside the United States for at least two years in accordance with section 204(h) of the Act.

* * * * *

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

8. The authority citation for Part 211 is revised to read as follows:

Authority: 66 Stat. 166, 173, 181, 182, 194, 198, 218, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1181, 1182, 1186a, 1203, 1225, 1257.

9. In § 211.1, paragraph (b)(1) is revised to read as follows:

§ 211.1 Visas.

* * * * *

(b) * * *

(1) *Alien Registration Receipt Card (Form I-151 or I-1551).* An Alien Registration Receipt Card may be presented in lieu of an immigrant visa by an immigrant alien who is returning to an unrelinquished lawful permanent residence in the United States, is returning prior to the second anniversary of the date on which he or she obtained such residence if subject to the provisions of section 216 of the Act, and:

(i) Is returning after a temporary absence abroad not exceeding one year;

(ii) Is an alien crewman regularly serving aboard an aircraft or vessel of American registry who is returning after a temporary absence abroad in connection with his/her duties as a crewman;

(iii) Is a civilian employee of the United States government returning from a foreign assignment pursuant to official orders; or

(iv) Is a spouse or child of a civilian employee of the United States government or member of the United States Armed Forces, provided that the spouse or child resided abroad while the employee or serviceperson was on overseas duty, and the spouse or child is preceding or accompanying the employee or serviceperson, or is following to join the employee or serviceperson within four months of his or her return to the United States.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

10. The authority citation for Part 212 is revised to read as follows:

Authority: 66 Stat. 166, 173, 182, 189, 198, 200, 202, 208, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1225, 1226, 1228, 1252, 1182b, 1182c.

11. In § 212.7, paragraph (a) is revised to read as follows:

§ 212.7 Waiver of certain grounds of excludability.

(a) *Section 212(h) or (i)—(1) Filing procedure.* (i) *Immigrant visa or fiancé(e) nonimmigrant visa applicant.* An applicant for an immigrant visa or "K" nonimmigrant visa who is excludable and seeks a waiver under section 212(h) or (i) of the Act shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

(ii) *Adjustment of status applicant.* An applicant for adjustment of status who is excludable and seeks a waiver under section 212(h) or (i) of the Act shall file an application on Form I-601 with the director or immigration judge considering the application for adjustment of status.

(2) *Termination of application for lack of prosecution.* An applicant may withdraw the application at any time prior to the final decision, whereupon the case will be closed and the consulate notified. If the applicant fails to prosecute the application within a reasonable time either before or after interview the applicant shall be notified that if he or she fails to prosecute the application within 30 days the case will be closed subject to being reopened at the applicant's request. If no action has been taken within the 30-day period immediately thereafter, the case will be

closed and the appropriate consul notified.

(3) *Decision.* If the application is approved the director shall complete Form I-607 for inclusion in the alien's file and shall notify the alien of the decision. If the application is denied the applicant shall be notified of the decision, of the reasons therefor, and of the right to appeal in accordance with Part 103 of this chapter.

(4) *Validity.* A waiver granted under section 212(h) or section 212(i) of the Act shall apply only to those grounds of excludability and to those crimes, events or incidents specified in the application for waiver. Once granted, the waiver shall be valid indefinitely, even if the recipient of the waiver later abandons or otherwise loses lawful permanent resident status, except that any waiver which is granted to an alien who obtains lawful permanent residence on a conditional basis under section 216 of the Act shall automatically terminate concurrently with the termination of such residence pursuant to the provisions of section 216. Separate notification of the termination of the waiver is not required when an alien is notified of the termination of residence under section 216 of the Act, and no appeal shall lie from the decision to terminate the waiver on this basis. However, if the respondent is found not to be deportable in a deportation proceeding based on the termination, the waiver shall again become effective. Nothing in this subsection shall preclude the director from reconsidering a decision to approve a waiver if the decision is determined to have been made in error.

* * * * *

PART 214—NONIMMIGRANT CLASSES

12. The authority citation for Part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a.

13. In § 214.2, paragraph (k) is revised to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(k) *Fiancées and fiancés of United States citizens—(1) Petition and supporting documents.* To be classified as a fiancé or fiancée as defined in section 101(a)(15)(K) of the Act, an alien must be the beneficiary of an approved visa petition filed on Form I-129F. The petition with supporting documents shall be filed by the petitioner with the director having administrative jurisdiction over the place where the petitioner is residing in the United States. A copy of a document submitted in support of a visa petition filed pursuant to section 214(d) of the Act and

this paragraph may be accepted, though unaccompanied by the original, if the copy bears a certification by an attorney, typed or rubber-stamped, in the language set forth in § 204.2(j) of this chapter. However, the original document shall be submitted if requested by the Service.

(2) *Requirement that petitioner and beneficiary have met.* The petitioner shall establish to the satisfaction of the director that the petitioner and beneficiary have met in person within the two years immediately preceding the filing of the petition. The director may exempt the petitioner from this requirement only if it is established that compliance would result in extreme hardship to the petitioner or that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice. Failure to establish that the petitioner and beneficiary have met within the required period or that compliance with the requirement should be waived shall result in the denial of the petition. Such denial shall be without prejudice to the filing of a new petition once the petitioner and beneficiary have met in person.

(3) *Children of beneficiary.* Without the approval of a separate petition on his or her behalf, a child of the beneficiary (as defined in section 101(b)(1) (A), (B), (C), (D), or (E) of the Act) may be accorded the same nonimmigrant classification as the beneficiary if accompanying or following to join him or her.

(4) *Notification.* The petitioner shall be notified of the decision and, if the petition is denied, of the reasons therefor and of the right to appeal in accordance with the provisions of Part 103 of this chapter.

(5) *Validity.* The approval of a petition under this paragraph shall be valid for a period of four months. A petition which has expired due to the passage of time may be revalidated by a director or a consular officer for a period of four months from the date of revalidation upon a finding that the petitioner and beneficiary are free to marry and intend to marry each other within 90 days of the beneficiary's entry into the United States. The approval of any petition is automatically terminated when the

petitioner dies or files a written withdrawal of the petition before the beneficiary arrives in the United States.

(6) *Adjustment of status from nonimmigrant to immigrant—(i) Nonimmigrant visa issued prior to November 10, 1986.* If the beneficiary contracts a valid marriage with the petitioner within 90 days of his or her admission to the United States pursuant to a valid K-1 visa issued prior to November 10, 1986, and the beneficiary and his or her minor children are otherwise admissible, the director shall record their lawful admission for permanent residence as of the date of their filing of an application for adjustment of status to lawful permanent resident (For IS-485). Such residence shall be granted under section 214(d) of the Act as in effect prior to November 10, 1986 and shall not be subject to the conditions of section 216 of the Act.

(ii) *Nonimmigrant visa issued on or after November 10, 1986.* Upon contracting a valid marriage to the petitioner within 90 days of his or her admission as a nonimmigrant pursuant to a valid K visa issued on or after November 10, 1986, the beneficiary and his or her minor children may apply for adjustment of status to lawful permanent resident under section 245 of the Act. Upon approval of the application the director shall record their lawful admission for permanent residence in accordance with that section and subject to the conditions prescribed in section 216 of the Act.

* * * * *

14. A new Part 216 is added to read as follows:

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

Sec.

216.1 Definition of conditional permanent resident.

216.2 Notification requirements.

216.3 Termination of conditional resident status.

216.4 Petition to remove conditional basis of lawful permanent resident status.

216.5 Waiver of requirement to file petition to remove conditions.

Authority: 66 Stat. 166, 173, 179, 184, 217, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1154, 1184, 1186a.

§ 216.1 Definition of conditional permanent resident.

A conditional permanent resident is an alien who has been lawfully admitted for permanent residence within the meaning of subsection 101(a)(20) of the Act, except that a conditional permanent resident is also subject to the conditions and responsibilities set forth in section 216 of the Act and Part 216 of this chapter. Unless otherwise specified,

the rights, privileges, responsibilities and duties which apply to all other lawful permanent residents apply equally to conditional permanent residents, including but not limited to the right to apply for naturalization (if otherwise eligible), the right to file petitions on behalf of qualifying relatives, the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed; the duty to register with the Selective Service System, when required; and the responsibility for complying with all laws and regulations of the United States. All references within this chapter to lawful permanent residents apply equally to conditional permanent residents, unless otherwise specified.

§ 216.2 Notification requirements.

(a) *When alien acquires status of conditional permanent resident.* At the time an alien acquires conditional permanent residence through admission to the United States with an immigrant visa or adjustment of status under section 245 of the Act, the Service shall notify the alien of the conditional basis of the alien's status, of the requirement that the alien apply for removal of the conditions within the ninety days immediately preceding the second anniversary of the alien's having been granted such status, and that failure to apply for removal of the conditions will result in automatic termination of the alien's lawful status in the United States.

(b) *When alien is required to apply for removal of the conditional basis of lawful permanent resident status.* Approximately 90 days before the second anniversary of the date on which the alien obtained conditional permanent residence, the Service should notify the alien a second time of the requirement that the alien and the petitioning spouse must file a petition to remove the conditional basis of the alien's lawful permanent residence. Such notification shall be mailed to the alien's last known address.

(c) *Effect of failure to provide notification.* Failure of the Service to provide notification as required by either paragraph (a) or (b) of this section above does not relieve the alien and the petitioning spouse of the requirement to file a joint petition to remove conditions within the 90 days immediately preceding the second anniversary of the date on which the alien obtained permanent residence.

§ 216.3 Termination of conditional resident status.

(a) *During the two-year conditional period.* The director shall send a formal written notice to the conditional permanent resident of the termination of

the alien's permanent resident status if the director determines that any of the conditions set forth in section 216(b)(1) of the Act are true. If the determination is based upon information which the alien cannot reasonably be expected to have, then the director must provide the alien with notice of the Service's intent to terminate the alien's lawful permanent residence and give the alien an opportunity to present evidence in opposition to the intended termination in accordance with § 103.2(b)(2) of this chapter. The termination of status, and of all rights and privileges concomitant thereto (including authorization to accept or continue in employment in this country), shall take effect as of the date of such determination by the district director, although the alien may request a review of such determination in deportation proceedings. In addition to the notice of termination, the district director shall issue an order to show cause why the alien should not be deported from the United States, in accordance with Part 242 of this chapter. During the ensuing deportation proceedings, the alien may submit evidence to rebut the determination of the district director. The burden of proof shall be on the Service to establish, by a preponderance of the evidence, that one or more of the conditions in section 216(b)(1) of the Act are true.

(b) *Determination of fraud after two years.* If, subsequent to the removal of the conditional basis of an alien's permanent resident status, the district director determines that the alien obtained permanent resident status through a marriage which was entered into for the purpose of evading the immigration laws, the director may institute rescission proceedings pursuant to section 246 of the Act (if otherwise appropriate) or deportation proceedings under section 241 of the Act.

§ 216.4 Petition to remove conditional basis of lawful permanent resident status.

(a) *Filing the petition—(1) General procedures.* Within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained permanent residence, the alien and the alien's spouse who filed the original immigrant visa petition or fiancée/fiancee petition through which the alien obtained permanent residence must file a Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (Form I-751) with the Service. The petition shall be filed within this time period regardless of the amount of physical presence which the alien has accumulated in the United States. Before Form I-751 may be considered as properly filed, it must be accompanied by the fee required under § 103.7(b) of this chapter and by documentation as described in paragraph (a)(4) of this section, and it

must be properly signed by the alien and the alien's spouse.

(2) *Dependent children.* Dependent children of a conditional permanent resident who acquired conditional permanent resident status concurrently with the parent may be included in the joint petition filed by the parent and the parent's petitioning spouse. A child shall be deemed to have acquired conditional residence status concurrently with the parent if the child's residence was acquired on the same date or within 90 days thereafter. Children who cannot be included in a joint petition filed by the parent and parent's petitioning spouse due to the child's not having acquired conditional resident status concurrently with the parent, the death of the parent, or other reasons may file an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I-752).

(3) *Jurisdiction.* Form I-751 shall be filed with the director of the regional service center having jurisdiction over the alien's place of residence.

(4) *Physical presence at time of filing.* An alien must be physically present in the United States at the time of filing the joint petition. An alien who is unable to remain in the United States after filing form I-751 until a decision is reached on the petition, may request that the district director consider the petition expeditiously. An alien who is not physically present in the United States during the filing period but subsequently applies for admission to the United States shall be processed in accordance with § 235.11 of this chapter.

(5) *Documentation.* Form I-751 shall be accompanied by evidence that the marriage was not entered into for the purpose of evading the immigration laws of the United States. Such evidence may include:

- (i) Documentation showing joint ownership of property;
- (ii) Lease showing joint tenancy of a common residence;
- (iii) Documentation showing commingling of financial resources;
- (iv) Birth certificates of children born to the marriage;
- (v) Affidavits of third parties having knowledge of the bona fides of the marital relationship, or
- (vi) Other documentation establishing that the marriage was not entered into in order to evade the immigration laws of the United States.

(6) *Termination of status for failure to file petition.* Failure to properly file Form I-751 within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained lawful permanent residence on a conditional basis shall result in the automatic termination of the alien's permanent residence status and the initiation of proceedings to

remove the alien from the United States. In such proceedings the burden shall be on the alien to establish that he or she complied with the requirement to file the joint petition within the designated period. Form I-751 may be filed after the expiration of the 90-day period only if the alien establishes to the satisfaction of the director, in writing, that there was good cause for the failure to file Form I-751 within the required time period. If the joint petition is filed prior to the jurisdiction vesting with the immigration judge in deportation proceedings and the director excuses the late filing and approves the petition, he or she shall restore the alien's permanent residence status, remove the conditional basis of such status and cancel any outstanding order to show cause in accordance with § 242.7 of this chapter. If the joint petition is not filed until after jurisdiction vests with the immigration judge, the immigration judge may terminate the matter upon joint motion by the alien and the Service.

(b) *Interview*—(1) *Authority to waive interview*. The director of the regional service center shall review the Form I-751 filed by the alien and the alien's spouse to determine whether to waive the interview required by the Act. If satisfied that the marriage was not for the purpose of evading the immigration laws, the regional service center director may waive the interview and approve the petition. If not so satisfied, then the regional service center director shall forward the petition to the district director having jurisdiction over the place of the alien's residence so that an interview of both the alien and the alien's spouse may be conducted. The director must either waive the requirement for an interview and adjudicate the petition or arrange for an interview within 90 days of the date on which the petition was properly filed.

(2) *Location of interview*. An interview on the Form I-751 shall be conducted by an immigration examiner or other officer so designated by the district director at the district office, files control office or suboffice having jurisdiction over the residence of the joint petitioners.

(3) *Termination of status for failure to appear for interview*. If the conditional resident alien and/or the petitioning spouse fail to appear for an interview in connection with the joint petition required by section 216(c) of the Act, the alien's permanent residence status will be automatically terminated as of the second anniversary of the date on which the alien obtained permanent residence. The alien shall be provided with written notification of the termination and the

reasons therefor, and an order to show cause shall be issued placing the alien under deportation proceedings. The alien may seek review of the decision to terminate his or her status in such proceedings, but the burden shall be on the alien to establish compliance with the interview requirement. If prior to the interview date the alien submits a written request that the interview be rescheduled or that the interview be waived, and the director determines that there is good cause for granting the request, the interview may be rescheduled or waived, as appropriate. If the interview is rescheduled at the request of the petitioners, the Service shall not be required to conduct the interview within the 90-day period following the filing of the petition.

(c) *Adjudication of petition*. The director shall adjudicate the petition within 90 days of the date of the interview, unless the interview is waived in accordance with paragraph (b)(1) of this section. In adjudicating the petition the director shall determine whether—

(1) The qualifying marriage was entered into in accordance with the laws of the place where the marriage took place;

(2) The qualifying marriage has been judicially annulled or terminated, other than through the death of a spouse;

(3) The qualifying marriage was entered into for the purpose of procuring permanent residence status for the alien; or

(4) A fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) in connection with the filing of the petition through which the alien obtained conditional permanent residence.

If derogatory information is determined regarding any of these issues, the director shall offer the petitioners the opportunity to rebut such information. If the petitioners fail to overcome such derogatory information the director may deny the joint petition, terminate the alien's permanent residence and issue an order to show cause to initiate deportation proceedings. If derogatory information not relating to any of these issues is determined during the course of the interview, such information shall be forwarded to the investigations unit for appropriate action. If no unresolved derogatory information is determined relating to these issues, the petition shall be approved and the conditional basis of the alien's permanent residence status removed, regardless of any action

taken or contemplated regarding other possible grounds for deportation.

(d) *Decision*—(1) *Approval*. If the director approves the joint petition he or she shall provide written notice of the decision to the alien on Form I-753 and shall require the alien to report to the appropriate office of the Service for processing for a new Alien Registration Receipt Card (if necessary), at which time the alien shall surrender any Alien Registration Receipt Card previously issued.

(2) *Denial*. If the director denies the joint petition, he or she shall provide written notice to the alien of the decision and the reason(s) therefor and shall issue an order to show cause why the alien should not be deported from the United States. The alien's lawful permanent resident status shall be terminated as of the date of the director's written decision. The alien shall also be instructed to surrender any Alien Registration Receipt Card previously issued by the Service. No appeal shall lie from the decision of the director; however, the alien may seek review of the decision in deportation proceedings. In such proceedings the burden of proof shall be on the Service to establish, by a preponderance of the evidence, that the facts and information set forth by the petitioners are not true and that the petition was properly denied.

§ 216.5 Waiver of requirement to file petition to remove conditions.

(a) *General*. A conditional resident alien who is ineligible for removal of the conditional basis of his or her permanent residence status may file an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I-752), if the alien was not at fault in failing to meet the filing requirement and the conditional resident alien is able to establish that:

(1) Deportation from the United States would result in extreme hardship, or

(2) The marriage upon which his or her status was based was entered into in good faith on the conditional resident alien's part, but was terminated by the conditional resident for good cause.

(b) *Fee*. Form I-752 shall be accompanied by the appropriate fee required under § 107.3(b) of this chapter.

(c) *Jurisdiction*. Form I-752 shall be filed with the regional service center director having jurisdiction over the alien's place of residence.

(d) *Interview*. The regional service center director may refer the application to the appropriate district, files control office or suboffice and require that the alien appear for an interview in

connection with the application for a waiver. The director shall deny the application and initiate deportation proceedings if the alien fails to appear for the interview as required.

(e) *Adjudication of waiver application*—(1) *Application based on claim of hardship*. In considering an application for a waiver based upon an alien's claim that extreme hardship would result from the alien's deportation from the United States, the director shall take into account only those factors which arose subsequent to the alien's entry as a conditional permanent resident. The director shall bear in mind that any deportation from the United States is likely to result in a certain degree of hardship, and that only in those cases where the hardship is extreme should the application for a waiver be granted. The burden of establishing that extreme hardship exists rests solely with the applicant.

(2) *Application for waiver based upon the alien's claim that the marriage was entered into in good faith*. In considering whether an alien entered into a qualifying marriage in good faith, the director shall consider evidence relating to the amount of commitment by both parties to the marital relationship. Such evidence may include—

- (i) Documentation relating to the degree to which the financial assets and liabilities of the parties were combined;
- (ii) The length of time during which the parties cohabited after the marriage and after the alien obtained permanent residence;
- (iii) The grounds for which the marriage was terminated, except that a finding by the court that the petitioning spouse was at fault shall not be deemed to be conclusive evidence that the alien spouse terminated the marriage for good cause, nor shall a divorce obtained in an area which does not require the determination of fault be deemed to be evidence that the alien spouse terminated the marriage for good cause; or

(iv) Other evidence deemed pertinent by the director.

(f) *Decision*. The director shall provide the alien with written notice of the decision on the application for waiver. If the decision is adverse, the director shall advise the alien of the reasons therefore, notify the alien of the termination of his or her permanent residence status, instruct the alien to surrender any Alien Registration Receipt Card issued by the Service and issue an order to show cause placing the alien under deportation proceedings. No appeal shall lie from the decision of the director; however, the alien may seek

review of such decision in deportation proceedings.

PART 223—REENTRY PERMITS

15. The authority citation for Part 223 is revised to read as follows:

Authority: 66 Stat. 173, 194, 100 Stat. 3537; 8 U.S.C. 1103, 1186a, 1203.

16. Section 223.2 is revised to read as follows:

§ 223.2 Period of validity.

A reentry permit is valid for a maximum period of two years unless otherwise restricted. However, a permit issued to an alien who has been admitted as a lawful permanent resident on a conditional basis pursuant to section 216 of the Act is not valid for a period which exceeds the date by which the alien must apply for removal of the conditional basis of his or her status (i.e., the second anniversary of the date on which the alien obtained conditional permanent residence) unless and until the conditions have been removed. The period of validity commences on the date of issuance and not on the date the application for the permit was submitted to the Service. A reentry permit cannot be renewed.

PART 223a—REFUGEE TRAVEL DOCUMENT

17. The authority citation for Part 223a is revised to read as follows:

Authority: 66 Stat. 173, 181, 182, 200, 201, 100 Stat. 3537; 8 U.S.C. 1103, 1181, 1182, 1186a, 1225, 1226, 1227, 1251, and Protocol Relating to the Status of Refugees (TIAS 6577).

18. Section 223a.4 and paragraph (a) of § 223a.5 are revised to read as follows:

§ 223a.4 Application.

An application for a refugee travel document shall be submitted on Form I-570 at least 45 days prior to the proposed date of departure from the United States. The application shall be submitted to the district director having jurisdiction over the applicant's place of residence and shall be accompanied by Form I-94 or Form I-151 or Form I-551. The applicant shall be notified of the decision on the application. If the application is approved, the refugee travel document shall be issued and the immigration status which may be accorded to the alien upon his or her return to the United States shall be specified therein. Unless the applicant is in the United States as a conditional entrant or lawful permanent resident, the status of "Parolee" shall be specified. If the applicant is in the United States as a conditional entrant, that status shall be specified. If the

applicant is a lawful permanent resident, that status shall be specified. If the applicant is a lawful permanent resident subject to the conditions of section 216 of the Act, that status and the conditional basis of that status shall be specified. If the application is denied, the applicant shall be notified of the reasons therefor and of the right to appeal in accordance with the provisions of Part 103 of this chapter.

§ 223a.5 Validity of refugee travel document.

(a) *General*. A refugee travel document shall be valid for not more than two years from the date of issuance and shall not be renewable. However, a permit issued to an alien who has been admitted as a lawful permanent resident on a conditional basis pursuant to section 216 of the Act may not be valid for a period which exceeds the date by which the alien must apply for removal of the conditional basis of his or her status (i.e., the second anniversary of the date on which the alien obtained permanent residence) unless and until the conditions have been removed. The document may be used for one or more applications for admission to the United States. It shall have no effect under the immigration laws except to show that during the period of its validity the lawful holder thereof may be accorded the status specified in the refugee travel document upon returning to the United States.

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

19. The authority citation for Part 235 is revised to read as follows:

Authority: 66 Stat. 166, 173, 182, 188, 191, 198, 200, 201, 202, 208, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1182, 1183, 1186a, 1201, 1224, 1225, 1226, 1227, 1228, 1252.

20. Section 235.11 is added to read as follows:

§ 235.11 Admission of conditional permanent residents.

(a) *General*. An alien seeking admission to the United States with an immigrant visa as the spouse or son or daughter of a United States citizen or lawful permanent resident shall be examined to determine whether the conditions of section 216 of the Act apply. If so, the alien shall be admitted conditionally for a period of two years. At the time of admission, the alien shall be notified that the alien and the petitioning spouse must file a Joint Petition to Remove the Conditional Basis of Alien's Permanent Residence

(Form I-751) within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

(b) *Correction of endorsement on immigrant visa.* If the alien is subject to the provisions of section 216 of the Act, but the classification endorsed on the immigrant visa does not so indicate, the endorsement shall be corrected and the alien admitted as a lawful permanent resident on a conditional basis if otherwise admissible. Conversely, if the alien is not subject to the provisions of section 216, but the visa classification endorsed on the immigrant visa indicates that the alien is subject thereto (e.g., if the second anniversary of the marriage upon which the immigrant visa is based occurred after the issuance of the visa and prior to the alien's application for admission) the endorsement on the visa shall be corrected and the alien admitted as a lawful permanent resident without conditions, if otherwise admissible.

(c) *Expired conditional resident alien status.* The lawful permanent resident alien status of a conditional resident automatically terminates if the conditional basis of such status is not removed by the Service through approval of a Joint Petition to remove the Conditional Basis of Alien's Permanent Resident Status (Form I-751). Therefore, an alien who is seeking admission as a returning resident subsequent to the second anniversary of the date on which conditional residence was obtained, and whose conditional basis of such residence has not been removed pursuant to section 216(c) of the Act, shall be placed under exclusion proceedings. However, exclusion proceedings may be terminated and the alien admitted as a returning resident if the required petition is filed jointly by the alien and petitioning spouse and approved by the Service, or if an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I-752) is filed by the alien and approved by the Service.

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

21. The authority citation for Part 242 is revised to read as follows:

Authority: 66 Stat. 173, 208, 214, 235, 100 Stat. 3537; 8 U.S.C. 1103, 1186a, 1252, 1254, 1362.

22. In § 242.7, paragraph (a) is revised to read as follows:

§ 242.7 Cancellation proceedings.

(a) *Cancellation of an order to show cause.* Any officer authorized by § 242.1(a) of this part to issue an order to show cause may cancel an order to show cause prior to jurisdiction vesting with the Immigration Judge pursuant to § 3.14 of this chapter provided the officer is satisfied that:

- (1) The respondent is a national of the United States;
- (2) The respondent is not deportable under immigration laws;
- (3) The respondent is deceased;
- (4) The respondent is not in the United States;
- (5) The respondent was placed under proceedings for failure to file a timely petition as required by section 216(c) of the Act, but his or her tardiness was excused in accordance with section 216(d)(2)(B) of the Act; or
- (6) The Order to Show Cause was improvidently issued.

23. In § 242.17, paragraph (a) is revised to read as follows:

§ 242.17 Ancillary matters, applications.

(a) *Creation of the status of an alien lawfully admitted for permanent residence.* The respondent may apply to the immigration judge for suspension of deportation under section 244(a) of the Act; for adjustment of status under section 245 of the Act, section 1 of the Act of November 2, 1966, or section 101 or 104 of the Act of October 28, 1977; or for the creation of a record of lawful admission for permanent residence under section 249 of the Act. The application shall be subject to the requirements of Parts 244, 245 and 249 of this chapter. The approval of any application made to the immigration judge under section 245 of the Act by an alien spouse (as defined in section 216(g)(1) of the Act), shall result in the alien's obtaining the status of lawful permanent resident on a conditional basis in accordance with the provisions of section 216 of the Act. However, the Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status required by section 216(c) of the Act shall be made to the director in accordance with Part 216 of this chapter. In conjunction with any application for creation of status of an alien lawfully admitted for permanent residence made to an immigration judge, if the respondent is inadmissible under any provision of section 212(a) of the Act and believes he meets the eligibility requirements for a waiver of the ground of inadmissibility, he may apply to the immigration judge for such waiver. The immigration judge shall inform the

respondent of his or her apparent eligibility to apply for any of the benefits enumerated in this paragraph and shall afford the respondent an opportunity to make application therefor during the hearing. In exercising discretionary power when considering an application under this paragraph, the immigration judge may consider and base the decision on information not contained in the record and not made available for inspection by the respondent, provided the Commissioner has determined that such information is relevant and is classified under Executive Order No. 12356 (47 FR 14874, April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security. Whenever the immigration judge believes he or she can do so consistently with safeguarding both the information and its source, the immigration judge should inform the respondent of the general nature of the information in order that the respondent may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

24. The authority citations following the sections in Part 245 are removed and the authority citation for Part 245 is revised to read as follows:

Authority: 66 Stat. 166, 173, 175, 178, 179, 182, 217, and 218, 100 Stat. 3359; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255 and 1257.

25. In § 245.1 paragraphs (b)(12), (b)(13), (b)(14) and (h) are added to read as follows:

§ 245.1 Eligibility.

(b) * * *

(12) Any alien who is already an alien lawfully admitted to the United States for permanent residence on a conditional basis pursuant to section 216 of the Act, regardless of any other quota or non-quota immigrant visa classification for which the alien may otherwise be eligible.

(13) Any alien admitted to the United States as a nonimmigrant fiancé as defined in section 101(a)(15)(K) of the Act, unless the alien is applying for adjustment of status based upon a marriage which was contracted within 90 days of entry with the United States citizen who filed a petition on behalf of

the alien pursuant to § 214.2(k) of this chapter.

(14) Any alien who seeks to adjust status based upon a marriage which occurred on or after November 10, 1986 and after the issuance of an Order to Show Cause (Form I-221) issued pursuant to Part 242 of this chapter, or after the issuance of a Notice to Alien Detained for Hearing by an Immigration Judge (Form I-222) issued pursuant to Part 235 of this chapter. However, this restriction shall no longer apply if the alien is found not to be deportable in deportation proceedings, if the alien is found to be admissible in exclusion proceedings, or if the Order to Show Cause is cancelled pursuant to § 242.7 of this chapter.

* * * * *

(h) *Conditional basis of status.* Whenever an alien spouse (as defined in section 216(g)(1) of the Act) or an alien son or daughter (as defined in section 216(g)(2) of the Act) is granted adjustment of status to that of lawful permanent residence, the alien shall be considered to have obtained such status

on a conditional basis subject to section 216 of the Act.

26. Section 245.8 is revised to read as follows:

§ 245.8 Medical examination.

Pursuant to section 234 of the Act, an applicant for adjustment of status shall be required to have a medical examination by a selected civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant shall be incorporated into the record. A medical examination shall not be required of an applicant for adjustment of status under the provisions of the Act of October 28, 1977, who was paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act and who was medically examined when processed for parole by a Service officer in the United States or abroad, unless medical grounds for exclusion existed when the applicant was processed for parole or such grounds presently appear to exist. A medical examination shall not be required of an applicant for adjustment of status who entered the United States as a nonimmigrant fiancé

or fiancée of a United States citizen as defined in section 101(a)(15)(K) of the Act pursuant to § 214.2(k) of this chapter if the applicant was medically examined prior to, and as a condition of, the issuance of the nonimmigrant visa; *Provided That* the medical examination must have occurred not more than one year prior to the date of application for adjustment of status. Any applicant certified under paragraphs (1), (2), (3), (4), or (5) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S. Public Health Service as provided in section 234 of the Act and Part 235 of this chapter.

The information collection requirements contained in this document have been approved by the Office of Management and Budget in accordance with the provisions of the Paperwork Reduction Act and are cited under 8 CFR Part 299, § 299.5.

Dated: January 14, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-1550 Filed 1-26-88; 8:45 am]

BILLING CODE 4410-10-M

Registered Federal Reporter

Wednesday
January 27, 1988

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 201, 356, and 369
Oral Health Care Drug Products for Over-
the-Counter Human Use; Tentative Final
Monograph; Notice of Proposed
Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 356, and 369

[Docket No. 81N-0033]

Oral Health Care Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) oral health care anesthetic/analgesic, astringent, debriding agent/oral wound cleanser, and demulcent drug products (products for use in the mouth and throat) are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the reports and recommendations of the Advisory Review Panel on OTC Oral Cavity Drug Products and the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products, public comments to the advance notices of proposed rulemaking on OTC oral health care drug products and OTC oral mucosal injury drug products that were based on the respective Panels' recommendations, and public comments on the agency's proposed regulation on OTC oral mucosal injury drug product, which was issued in the form of a tentative final monograph. This proposal incorporates part of the tentative final monograph on OTC oral mucosal injury drug products that was published in the *Federal Register* of July 26, 1983 (48 FR 33984) into the rulemaking for OTC oral health care drug products and is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by May 26, 1988. Because of the length and complexity of this proposed regulation, the agency is allowing a period of 120 days for comments and objections instead of the normal 60 days. New data by January 27, 1989. Comments on the new data by March 27, 1989. Written comments on the agency's economic impact determination by May 26, 1988.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm.

4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

William E. Gilbertson, Center for Drug Evaluation and Research (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of May 25, 1982 (47 FR 22760), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC oral health care drug products, together with the recommendations of the Advisory Review Panel on OTC Oral Cavity Drug Products (Oral Cavity Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by August 23, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by September 22, 1982. In a notice published in the *Federal Register* of July 30, 1982 (47 FR 32953), FDA extended the periods for comments and reply comments to allow more time for interested persons to adequately address several important issues raised by the Panel. The notice extended the comment period to November 22, 1982 and the reply comment period to December 22, 1982. In a notice published in the *Federal Register* of December 28, 1982 (47 FR 57739), FDA extended the reply comment period to January 21, 1983 to allow time for interested persons to adequately address several important issues raised during the comment period.

In response to the advance notice of proposed rulemaking, fifteen drug manufacturers, three professional organizations, four health professionals, and two individual consumers submitted comments.

Because there is considerable overlap between the rulemaking on OTC oral mucosal injury drug products and the rulemaking on OTC oral health care drug products, the agency is incorporating that part of the oral mucosal injury rulemaking that covers oral wound cleansers into this tentative final monograph. The intent of both rulemakings is to identify those ingredients that are generally recognized as safe and effective in temporarily relieving the symptoms of minor oral wounds or other irritations of the mouth or gums. Carbamide peroxide, hydrogen peroxide, and sodium perborate monohydrate, the three ingredients included in the tentative final monograph for OTC oral mucosal injury

drug products as oral wound cleansers, were also included in the rulemaking for OTC oral health care drug products as debriding agents. A number of the comments submitted to the advance notice of proposed rulemaking for OTC oral health care drug products pointed out the similarities between oral wound cleansers and debriding agents and requested that the labeling for these ingredients be consistent between the two rulemakings. In order to achieve this consistency, the agency has decided to combine debriding agents and oral wound cleansers into one therapeutic class and to include it in this tentative final monograph. Oral wound healing agents, also addressed in the tentative final monograph for OTC oral mucosal injury drug products, were addressed in a final rule published in the *Federal Register* of July 18, 1986 (51 FR 26112).

The agency's proposed regulation, in the form of a tentative final monograph, for OTC oral mucosal injury drug products was published in the *Federal Register* of July 26, 1983 (48 FR 33984). Interested persons were invited to file by September 26, 1983, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by November 23, 1983. New data could have been submitted until July 26, 1984.

The agency received no written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs in response to the tentative final monograph on OTC oral mucosal injury drug products.

In accordance with § 330.10(a)(10), the data and information considered by the Panels and the agency are on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above). Copies of the comments received are also on public display in the Dockets Management Branch.

FDA is issuing the tentative final monograph for OTC oral health care drug products in several segments. This document is the first segment to be published, and it contains the agency's responses to general comments on OTC oral health care drug products and to comments on OTC oral health care anesthetic/analgesic, astringent, debriding agent/oral wound cleanser, and demulcent drug products. A subsequent segment of the tentative final monograph on OTC oral health care drug products will be published in a future issue of the *Federal Register* and will contain the agency's responses to

comments regarding oral health care antimicrobial drug products, and comments on the drug or cosmetic status of certain oral health care ingredients and claims.

In order to conform to terminology used in the OTC drug review regulations (21 CFR 330.10), the present document is designated as a "tentative final monograph." Its legal status, however, is that of a proposed rule. In this tentative final monograph (proposed rule) to establish Part 356 (21 CFR Part 356), FDA states for the first time its position on the establishment of a monograph for OTC oral health care (anesthetic/analgesic, a stringent, debriding agent/oral wound cleanser, and demulcent) drug products. Final agency action on this matter will occur with the publication at a future date of a final monograph for these drug products.

This proposal constitutes FDA's tentative adoption of the Oral Cavity Panel's conclusions and recommendations on these drug products, as modified on the basis of the comments received and the agency's independent evaluation of the Panel's report, and the agency's reevaluation of the previously published proposed rule on OTC oral mucosal injury drug products. Modifications have been made for clarity and regulatory accuracy and to reflect new information. Such new information has been placed on file in the Dockets Management Branch (address above). These modifications are reflected in the following summary of the comments and FDA's responses to them.

The OTC procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug

products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In the advance notice of proposed rulemaking for OTC oral health care drug products (published in the **Federal Register** of May 25, 1982 (47 FR 22760)), the agency suggested that the conditions included in the monograph (Category I) be effective 6 months after the date of publication of the final monograph in the **Federal Register**. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written, ordered, received, and incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling to be in effect 6 months after the date of publication of the final monograph. Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.

In addition, some products will have to be reformulated to comply with the monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and if further reformulation is required, there could be further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling and reformulation in order to avoid an unnecessary disruption of the marketplace that could not only result in economic loss, but also interfere with

consumers' access to safe and effective drug products. Therefore, the agency is proposing that the final monograph be effective 12 months after the date of its publication in the **Federal Register**. The agency believes that within 12 months after the date of publication most manufacturers can order new labeling and reformulate their products and have them in compliance in the marketplace.

If the agency determines that any labeling for a condition included in the final monograph should be implemented sooner than the 12-month effective date, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition, from OTC drug products.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the **Federal Register** of July 20, 1973 (38 FR 19444) or to additional information that has come to the agency's attention since publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Tentative Conclusions on the Comments

A. General Comments on Oral Health Care Drug Products

1. One comment contended that OTC drug monographs are interpretive, as opposed to substantive, regulations. The comment referred to statements on this issue submitted earlier to other OTC drug rulemaking proceedings.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the **Federal Register** of May 11, 1972 (37 FR 9464), and in paragraph 3 of the preamble to the tentative final monograph for antacid drug products, published in the **Federal Register** of November 12, 1973 (38 FR 31260). FDA reaffirms the conclusions stated there. Subsequent court decisions have confirmed the agency's authority to issue substantive regulations by rulemaking. See, e.g., *National Nutritional Foods Association v. Weinberger*, 512 F.2d 688, 696-98 (2d Cir. 1975) and *National Association of Pharmaceutical Manufacturers v. FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd*, 637 F.2d 887 (2d Cir. 1981).

2. Noting its continued opposition to the exclusivity policy, one comment stated that FDA should not prohibit the use of alternative OTC labeling

terminology to describe indications, if that terminology is truthful, not misleading, and intelligible to the consumer. The comment's views on this subject were presented in oral and written testimony submitted to FDA in connection with the September 29, 1982 FDA hearing on the exclusivity policy.

In the Federal Register of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indications for use of OTC drug products. Under the final rule, the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All required OTC drug labeling other than indications for use (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under an OTC drug monograph where exact language has been established and identified by quotation marks in an applicable monograph or other regulation, e.g., 21 CFR 201.63 or 330.1(g).

In this tentative final monograph, supplemental language relating to indications has been proposed and captioned as *Other Allowable Statements*. Under FDA's revised labeling policy (51 FR 16258), such statements are included at the tentative final stage as examples of other truthful and nonmisleading language that would be allowed elsewhere in the labeling. In accordance with the revised labeling policy, such statements would not be included in a final monograph. However, the agency has decided that, because these additional terms have been reviewed by FDA, they should be incorporated, wherever possible, in final OTC drug monographs under the heading "Indications" as part of the indications developed under the monograph.

3. One comment suggested that the phrase "Try to avoid swallowing this product" be deleted as a warning for oral health care gargles, mouthwashes,

and rinses because the "Warnings" section on the label should be reserved for instances that pose a serious threat to the well-being of the consumer. The comment contended that the Panel's recommended warning is unduly alarming to consumers who may conclude that swallowing even a minute quantity of the product will result in substantial harm. The comment suggested that reference to the fact that the product is not intended to be swallowed be included in the "Directions" section of the label rather than in the "Warnings" section. The comment then claimed that the phrase "Expel remainder" more clearly signifies the proper and intended use of these products without unnecessarily alarming consumers. The comment gave the following example: "Rinse thoroughly and expel remainder."

The agency agrees with the comment that information regarding swallowing or not swallowing an oral health care liquid dosage form is more appropriately included in the directions section than in the warnings section of the label. Including this information in the directions section is consistent with the style and format of other recently published OTC tentative final monographs.

The agency is not including the Panel's recommended warning in §§ 356.50(c)(3), 356.52(c)(2), 356.54(c)(2), and 356.56(c)(2). "Try to avoid swallowing this product," in this tentative final monograph. Instead, along with other modifications (see comments 10, 11, 27, and the Summary of the Agency's Changes, Nos. 18 and 19, below), the agency is proposing the phrase "and then spit out" as part of the directions in this tentative final monograph (e.g., "Gargle, swish around in the mouth, or allow to remain in place for at least 1 minute, and then spit out"). Including the phrase "and then spit out" points out that such products are not intended to be swallowed and is consistent with the working for directions already proposed by the agency for liquid dosage forms in the tentative final monograph for OTC oral mucosal injury drug products (48 FR 33993). The agency did not receive any comments opposed to this proposal. The agency believes that the phrase "spit out" is better understood by the consumer and is preferable to the comment's suggested phrase "expel remainder."

B. General Comments on Anesthetic/Analgesic Drug Products

4. One comment stated that topical anesthetic/analgesic drug products are often promoted to the public with claims

or implications that they prevent or treat diseases of the mouth or upper respiratory tract. Objecting to the OTC use of these drug products for the relief of pain or other symptoms of oral disease, the comment stated that the need to use topical anesthetic/analgesic drug products should be ascertained by a dentist or a physician. In addition, the comment said that OTC use of these drug products "may delay patients seeking professional care for the underlying disease."

A reply comment disagreed with the comment's position, stating that it "is a denial of the public's right to self-medicate for conditions that can be safely and effectively managed utilizing over-the-counter drugs appropriately labeled."

The agency agrees that these products should not be labeled to prevent or treat diseases, but disagrees with the comment that a health professional should first be consulted. The agency agrees with the reply comment regarding OTC use of topical anesthetic/analgesic drug products for oral health care. The Panel recommended labeling indications that clearly state that these products are to be used for the temporary relief of occasional minor irritation, pain, sore mouth, and sore throat. The Panel also provided warnings to discontinue use and to consult a physician if irritation persists or increases or if a rash appears on the skin and to consult a physician promptly for symptoms such as a severe or persistent sore throat or a sore throat accompanied by high fever, headache, nausea, and vomiting, which may indicate a serious condition. There are also warnings not to use a product indicated for sore throat for more than 2 days and not to use a product indicated for sore mouth for more than 7 days unless directed by a doctor.

The agency believes that the indications and warnings proposed in this tentative final monograph provide adequate labeling for the safe and effective OTC use of these products. Therefore, topical anesthetic/analgesic ingredients are included in this tentative final monograph.

5. One comment noted that the Panel's recommended monograph did not provide for professional labeling for anesthetic/analgesic agents. The comment stated that the agency has long recognized the need for labeling OTC drugs directed exclusively to health care professionals because physicians frequently prescribe nonprescription products for the treatment of various conditions. The comment added that under Category II labeling for anesthetics/analgesics (47 FR 22826), the

Panel included a list of phrases as indications for use in conditions that properly require diagnosis by a physician. These indications include relief of pain associated with such conditions as tonsillitis, pharyngitis, and throat infections and such terms as "stomatitis" and "aphthous ulcers."

The comment agreed with the Panel that these conditions require professional diagnosis, but pointed out that Category I anesthetic/analgesic products are safe and effective for use in such instances. Therefore, the comment requested that the above indications for OTC oral health care products containing anesthetic/analgesic ingredients be included under § 356.85 *professional labeling*, for dissemination to health care professionals (but not to the general public).

The Panel placed OTC label claims that referred to pharyngitis, tonsillitis, and aphthous ulcers in Category II to guard against self-diagnosis and self-treatment of conditions that are not amenable to OTC treatment (47 FR 22785). The agency agrees with the Panel that such claims are not appropriate for OTC labeling. However, the agency believes that Category I OTC anesthetic/analgesic ingredients are as effective in relieving the pain associated with conditions that must be diagnosed by a physician as they are in relieving the occasional minor irritation, pain, sore throat, and sore mouth that can be self-diagnosed. Moreover, in its discussion on sore mouth, the Panel stated that anesthetic/analgesic ingredients can be used as adjuncts to therapeutic regimens outlined by physicians in conditions where professional care is necessary (47 FR 22776). At the present time, there are some OTC anesthetic/analgesic drug products on the market that are also promoted to health care professionals for some of the indications that were placed in Category II by the Panel (Refs. 1 and 2). The agency has determined that OTC anesthetic/analgesic drug products can be used for the relief of pain associated with tonsillitis, pharyngitis, and throat infections which must first be diagnosed by a physician. Therefore, professional labeling is being included in the tentative final monograph to alert health care professionals to the additional indications. In a new section, § 356.80, the agency is proposing that the professional labeling of products containing anesthetic/analgesic ingredients, identified in § 356.10, may contain the following indication: "For the temporary relief of pain associated with" (select one or more of the

following conditions: "tonsillitis," "pharyngitis," "throat infections," or "stomatitis") However, these same indications remain in Category II for use on the labeling of these OTC drug products marketed directly to consumers because consumers cannot self-diagnose and self-treat these conditions.

Regarding the condition of "aphthous ulcers" (canker sores) mentioned by the comment, the agency has determined that this condition is self-diagnosable and self-treatable. Accordingly, as explained in comment 6 below, the agency is including in § 356.55 for anesthetic/analgesic ingredients the OTC indication "For temporary relief of pain associated with canker sores."

References

(1) "Physician's Desk Reference For Nonprescription Drugs," 7th Edition, Medical Economics Company, Oradell, NJ, p. 650, 1986.

(2) OTC Volume 130038.

6. One comment objected to the Panel's Category II classification of the indication "For temporary relief of pain associated with canker sores." The comment stated that canker sores are oral mucosal lesions that are commonly and accurately diagnosed by the consumer. The comment added that canker sores are usually self-limiting and seldom lead to complications, and that it is not in the best interest of the consumer to require that professional advice be sought prior to treatment with local anesthetics that have been proven safe and effective. The comment requested that the agency modify § 356.50(b) to include the indication "For temporary relief of pain associated with canker sores."

The agency agrees with the comment and believes that canker sores can be recognized by the consumer and that the pain associated with canker sores is amenable to treatment with OTC anesthetic/analgesic active ingredients. The agency notes that the Advisory Review Panel on OTC Miscellaneous Internal Drug Products concluded that canker sores are self-limiting, tend to reoccur in the same individual, are self-diagnosable, but are not amenable to self-treatment because of their diverse and usually unknown etiology (47 FR 504 to 505). However, in the tentative final monograph for OTC oral mucosal injury drug products (48 FR 33984), the agency stated that oral wound cleansing agents may be labeled for temporary use in cleansing canker sores because those agents could provide a useful function by removing debris from the ulcerated tissue. The agency believes that OTC anesthetic/analgesic active ingredients

may provide an additional useful function by alleviating the pain commonly associated with canker sores. Therefore, in this tentative final monograph, the agency is proposing to modify § 356.55(b) to include the following indication for oral health care anesthetic/analgesic active ingredients: "For temporary relief of pain associated with canker sores."

7. One comment pointed out that statements referring to the time of onset of action of local anesthetics applied to the mucous membranes, in terms other than in definite units of time, were placed in Category II by the Panel (47 FR 22826). The comment stated that for all local anesthetics/analgesics included in the Panel's recommended monograph, the onset of activity is virtually instantaneous, occurring within seconds. The comment also stated that this rapid onset of action is the basis for the rational use of anesthetics in local pain relief and that the inclusion of such terms as "fast" or "quick" in reference to onset of action for these agents is truthful and not misleading. The comment contended that such terms are properly considered as product attributes and that the agency should not prohibit communication of these qualities to the consumer.

Claims concerning characteristics of product performance or attributes will be dealt with in OTC drug monographs only when they imply the existence of a characteristic that would be therapeutically significant for the drug in question. For example, "rapid onset" is a property that is not necessarily significant for most OTC drugs, including topical oral anesthetic/analgesic agents, but is important to the effective use of a bronchodilator in counteracting an asthma attack. Because the claims "fast" or "quick" are not directly related to the safe and effective use of topically applied oral anesthetic/analgesic agents, the agency considers these claims to be outside the scope of the monograph. The agency will continue to evaluate these claims, on a product-by-product basis, under the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 352) relating to labeling that is false and misleading. Any term that is outside the scope of the monograph, even though it is truthful and not misleading, may not appear on any portion of the labeling that is required by the monograph and may not detract from the required information. However, such terms may be included on the labeling provided that they are not intermixed with labeling established by

the monograph, and the statement is not false or misleading.

8. One comment disagreed with the Panel's recommended dosage of benzocaine as an anesthetic/analgesic for use in a throat lozenge. The Panel recommended a dosage of 2 to 15 milligrams (mg) benzocaine in the form of a lozenge every 2 hours, if necessary. The comment proposed that the upper limit of benzocaine for adult use be increased to a maximum of 40 mg every half hour, as necessary, with a maximum adult dosage of 1.3 grams (g) of benzocaine per day.

The comment based its recommendation on marketing experience, feedback from customers, and taste tests. The comment stated that taste tests, conducted on company personnel, showed that a dose of 20 mg benzocaine is necessary to produce an effective level of anesthesia in the throat when sugar-based lozenges are used and that in sugar-free products, the anesthetic effect appears to be inhibited and a larger dose of benzocaine (up to 40 mg) is needed. The comment added that at these doses, the duration of anesthesia in the throat is approximately 30 minutes. The comment also stated that its stability studies show that in a warm, moist environment, similar to that encountered in the throat, benzocaine is rapidly degraded; thus, a dosage interval of every 30 minutes rather than every 2 hours is more appropriate. Citing the "United States Dispensary" and the Panel's discussion of toxicity data on benzocaine (47 FR 22808 to 22809), the comment emphasized that its recommended dosage does not produce harmful or toxic effects from benzocaine or its degradation products (i.e., ethanol and *p*-aminobenzoic acid).

Because the comment did not submit any clinical data to support an increase in the maximum dosage of benzocaine in a lozenge formulation, the undocumented statements made by the comment cannot be considered adequate proof of the safety and effectiveness of a 20-mg or 40-mg dose of benzocaine as a lozenge to be used every 30 minutes. Therefore, the agency cannot accept the higher dosage recommended by the comment for this ingredient without additional data being provided to support such a change.

9. One comment requested that the agency consider phenol and phenolate sodium, at a total concentration of 0.5 to 1.5 percent expressed as phenol, as a single active ingredient rather than as a combination in drug products. The comment pointed out that the Dental Panel, in its report on OTC drug products for the relief of oral discomfort,

considered phenol and phenolate sodium to be a single active ingredient (47 FR 22712). The comment also noted that the Advisory Review Panel on Antimicrobial (II) Drug Products (Antimicrobial II Panel), in its report on OTC topical antifungal drug products, stated that it considered phenol and phenolate sodium to be a single active ingredient when both are contained in a product formulation and that the total level of phenol and phenolate sodium is expressed as percent phenol. (See the Federal Register of March 23, 1982; 47 FR 12480.)

According to the comment, in many rulemaking proceedings the agency "has considered salts of active ingredients synonymous with the free acid or base when such salts do not significantly change the safety or efficacy of that free acid or base." The comment further objected to these products being subject to the combination sections of the monograph and pointed out that phenolate sodium invariably arises from phenol-containing formulations when pH adjustments are required to make such products pharmaceutically acceptable, and not for the purpose of combining two distinct active ingredients.

The agency has reviewed the Dental Panel's report on OTC drug products for the relief of oral discomfort and finds that the Panel evaluated several drug products containing phenol and phenolate sodium (47 FR 22739). However, the Panel did not distinguish between phenolate sodium and phenol as separate single ingredients or classify such drug products as combinations. It considered such drug products as single active ingredient products containing phenol as the active ingredient.

The agency has also reviewed the Antimicrobial II Panel's report on topical antifungal drug products and notes that the Panel discussed phenol and phenolate sodium in a single writeup and discussed safety and effectiveness based on the concentration of phenol (47 FR 12517).

The Oral Cavity Panel recognized that the active moiety in phenolate sodium is phenol, and recommended for a liquid dosage form a concentration of 0.5 to 1.5 percent for phenol as a single ingredient and a concentration equivalent to 0.5 to 1.5 percent phenol for phenolate sodium as a single ingredient. For a solid dosage form, the Panel recommended 10 to 50 mg of phenol as a single ingredient and a concentration equivalent to 10 to 50 mg phenol for phenolate sodium as a single ingredient (47 FR 22814 to 22816).

The agency concludes that, because safety and effectiveness as an anesthetic/analgesic is based on the

concentration of phenol, products containing both phenolate sodium and phenol are not considered as drug products containing two separate single active ingredients and are not combination drug products subject to the combination requirements in § 356.20 of the monograph. Accordingly, phenol identified in § 356.10(g) and phenolate sodium identified in § 356.10(h) of the Panel's recommended monograph are replaced in proposed § 356.10 of this tentative final monograph with the following: "(f) Phenol preparations (phenol and/or phenolate sodium)."

10. One comment stated that the Oral Cavity Panel had unnecessarily restricted the dosing frequency for phenol and phenolate sodium liquid formulations (mouthwashes, gargles, liquids, and sprays) in § 356.50(d) (7) and (8) of its recommended monograph. The comment stated that a number of studies submitted to the agency indicate that 2 hours is the maximum duration of effective anesthesia/analgesia typically induced by these ingredients. Thus, the Panel's recommended maximum frequency of "three to four times daily" is too restrictive. In addition, the comment contended that this dosing frequency is inconsistent with the dosing frequency for lozenges, which is every 2 hours. The comment requested that the dosing frequency for phenol and phenolate sodium liquid preparations be revised to every 2 hours.

The agency agrees with the comment that the data support a dosing frequency of every 2 hours for phenol-containing liquid formulations rather than three to four times daily as recommended by the Panel. Several of the studies submitted to the agency indicate that the duration of relief afforded by aqueous solutions of 1.5 percent phenol ranges from 30 minutes or less to approximately 2 hours (Refs. 1 through 4). Only one study (Ref. 3) mentioned a number of subjects (17 out of 44) who experienced relief defined as lasting longer than 2 hours. In that study, 27 subjects reported relief lasting 1 hour or less. Although these studies were submitted to the Panel, they were not discussed in the Panel's evaluation of this ingredient.

The agency believes that the use of 0.5 to 1.5 percent phenol-containing liquid formulations at a dosage frequency of every 2 hours is safe. In its report on OTC drug products for the relief of oral discomfort (47 FR 22712), the Dental Panel recommended that the daily dosage of phenol not exceed 600 mg daily for adults and 300 mg daily for children 6 to 12 years of age (47 FR 22759). When an aqueous solution of

phenol is used according to label directions as a mouthwash or gargle, the amount of phenol absorbed or ingested is small and well below the maximum daily dosage recommended by the Dental Panel. One study (Ref. 5) demonstrates that when 1 fluid ounce of a 1.4-percent phenol solution (411 mg phenol) is used as a gargle or mouthwash with a rinse time of 2 minutes before spitting out, approximately 50 mg phenol (12 percent) is retained or absorbed in the oral cavity. The recommended rinse time for phenol-containing mouthwashes or gargles is 15 seconds (Refs. 1 and 6) indicating that under conditions of normal use, less than 12 percent of the phenol in the dose is retained or absorbed in the oral cavity after a single application of the drug product. Even if an adult applied 25 milliliters (mL) of a drug product containing 1.5 percent phenol every 2 hours with a rinse time of 2 minutes before spitting out, less than 550 mg of phenol would be absorbed or retained in the oral cavity over a 24-hour period, and the recommended maximum daily adult dosage of 600 mg phenol would not be exceeded.

Because there is an adequate margin of safety when label directions are followed and because the duration of anesthesia induced by phenol-containing drug products is less than 2 hours, the agency concludes that the maximum dosing frequency of phenol-containing liquid dosage forms should be every 2 hours, the same as the dosing frequency of phenol-containing lozenges (solid dosage forms). Therefore, in § 356.55(d)(6) of this tentative final monograph, the agency is proposing revised directions for products containing phenol preparations (phenol and/or phenolate sodium) that reflect a dosing frequency of every 2 hours.

References

- (1) Bronsky, D.A., "to Evaluate the Efficacy of Both Chloraseptic Solution and Chloraseptic Lozenges When Used to Relieve the Gingival and Buccal Mucosal Discomfort Associated with Orthodontic Braces," draft of unpublished study, C00014, Docket No. 80N-0033, Dockets Management Branch.
- (2) Blum, B., "Clinical Evaluation of an Anesthetic Mouthwash," *The New York State Dental Journal*, 26:419-421, 1960.
- (3) Young, J.R., "Use of Phenol Anesthetic Spray for Pain Relief," *E.E.N.T. Digest*, 30:51-60, 1968.
- (4) Braunlin, E.A., "Evaluation of an Antiseptic, Anesthetic Solution," *Journal of the National Medical Association*, 56:151-152, 1964.
- (5) OTC Volume 130065
- (6) OTC Volume 13ATFM.

11. One comment noted that although the Panel's recommended monograph

provides for a gel form of benzocaine as an anesthetic/analgesic, a gel formulation for phenol was apparently inadvertently omitted. The comment requested that phenol as a 0.5- to 1.5-percent gel (i.e., the Category I concentration of phenol as an anesthetic/analgesic ingredient in a gel formulation) be included in the tentative final monograph.

The agency agrees that an aqueous gel formulation is an acceptable dosage form of phenol for use as an anesthetic/analgesic. Moreover, any Category I oral health care active ingredient may be formulated in any rational dosage form that is consistent with the directions for use of the product, provided that the ingredient is present at the specified dosage and the product is manufactured according to the regulations for the Current Good Manufacturing Practice for Finished Pharmaceuticals (21 CFR Part 211). Therefore, the agency finds it unnecessary to list specific dosage forms for oral health care drug products unless the dosage form is specifically relevant to the use, safety, or effectiveness of the ingredient.

Accordingly, to allow for the different solid dosage forms (e.g., lozenges, compressed tablets) and nonsolid dosage forms (e.g., mouthwashes, gels) that may be used when formulating oral health care drug products, the agency is using the terms "solid dosage forms" and "dosage forms other than solid" in this tentative final monograph and is not adopting words such as "rinse," "mouthwash," "lozenge," "gel," etc., that appeared in the advance notice of proposed rulemaking, except where the specific dosage form is relevant to the use, safety, or effectiveness of the ingredient. The directions in §§ 356.55(d), 356.65(d), 356.70(d), and 356.75(d) of this tentative final monograph, where appropriate, use the terms "solid dosage forms" and "dosage forms other than solid."

12. Although agreeing with the Panel's recommended concentration of 0.04 to 2 percent menthol as an anesthetic/analgesic in liquid oral health care products (47 FR 22928), one comment contended that the recommended dosage for menthol per lozenge (2 to 20 mg) does not include the lowest dosage level that was submitted to the Panel. The comment claimed that a submission to the Panel contained a study showing that 1 mg menthol per 2-g lozenge exerted a statistically significant pharmacologic effect in the oral cavity (Ref. 1). The comment contended that as a result of reviewing the study in the submission to the Panel (Ref. 1) and subsequent literature provided on the method used in the study (Ref. 2), the

Panel accepted the citric acid aerosol test for the assessment of drug activity. The comment recommended revision of the minimum effective dose for menthol in lozenges to include doses down to and including 1 mg per lozenge.

The agency reviewed the submission referred to by the comment (Ref. 1), but did not find a study using a concentration of 1 mg menthol per 2-g lozenge. The only study in the submission that specified the concentration of menthol was one in which menthol was used in combination at a concentration of 9 mg per 3-g lozenges (Ref. 3). The agency concludes that the data in this study cannot be used to support the effectiveness of menthol as an oral health care anesthetic/analgesic ingredient at doses down to and including 1 mg per lozenge, as recommended by the comment, because the study investigated a higher dose of menthol in a combination product. Therefore, any pharmacologic effect observed in the oral cavity can neither be attributed to menthol alone nor to menthol at the lower dosage level, as the comment claims.

Regarding the comment's statement that the Panel accepted the citric acid aerosol test for the assessment of drug activity, the agency's position, as stated in the *Federal Register* of October 19, 1983 (48 FR 48582), is that induced-cough studies are supportive, but are not a substitute for adequate and well-controlled studies in the target population. Additionally, cough reduction alone is not sufficient proof of the effectiveness of an ingredient labeled as an anesthetic/analgesic for oral health care use. Studies conducted on drugs for these uses must demonstrate a decrease in sore mouth or sore throat pain.

Therefore, the agency is proposing a Category III classification for less than 2 mg menthol as an anesthetic/analgesic active ingredient for use in a solid dosage form.

References

- (1) OTC Volume 130095.
- (2) Packman, E.W., and S.J. London, "The Utility of Artificially Induced Cough as a Clinical Model for Evaluating Antitussive Drug Combinations. Part I: Liquid and Solid Formulations of Systemic Drug," *Current Therapeutic Research*, 21:855-866, 1977.
- (3) Packman, E.W., "Victors" (Study CRD No. 71-7), draft of unpublished study, OTC Volume 130095.

13. One comment noted that the Panel recommended a 0.05 to 5 percent concentration of benzyl alcohol as an anesthetic/analgesic ingredient as a liquid and a minimum of 100 mg as a lozenge. The comment stated that for a

usual 2-g lozenge, 100 mg corresponds to 5 percent, the maximum concentration allowed for liquids. However, because a lozenge is in contact with the oral cavity for a much longer period of time than a mouthwash or a spray, the benzyl alcohol has a much greater opportunity to exert the desired effect. Noting that as little as a 1-percent concentration is used for parenteral injection to produce an anesthetic effect, the comment recommended that the minimum content of benzyl alcohol for use in a lozenge be reduced to 5 mg (equivalent to 0.05 percent in 10 mL of a solution).

The Panel recommended a maximum concentration of 10 percent benzyl alcohol when formulated as a liquid, not 5 percent as stated by the comment (47 FR 22928). Thus, the amount of benzyl alcohol in the 2-g lozenge containing 100 mg of benzyl alcohol mentioned by the comment would not correspond to the maximum concentration recommended for a liquid.

The Panel acknowledged that the effect of benzyl alcohol when incorporated in a lozenge is sustained as long as the mucous membranes are bathed in a sufficient concentration of drug, but that the duration of action when benzyl alcohol is incorporated in rinses is brief, seldom more than 5 to 10 minutes (47 FR 22810). It would be expected that lower concentrations, such as 1 percent benzyl alcohol, when injected parenterally or when used as a rinse would produce an anesthetic effect because all of the drug is immediately available. In lozenge form, however, the amount of drug available is dependent upon other factors, such as the dissolution rate of the lozenge and the total concentration of drug in the lozenge. Thus, the anesthetic effect of the two formulations (lozenge and liquid) containing the same concentration of benzyl alcohol may not be the same because the amount of benzyl alcohol available at any one time in a lozenge would be less than that available in a liquid.

The Panel believed that a minimum dose of 100 mg in a lozenge is appropriate in order to produce an anesthetic effect. No data were submitted by the comment to support the effectiveness of a dose lower than 100 mg per lozenge for benzyl alcohol as a topical anesthetic/analgesic active ingredient. Therefore, the agency has no basis for proposing that 5 mg be the minimum allowable content for a lozenge. The agency invites the submission of data in support of the effectiveness of the comment's suggested lower minimum dose for benzyl alcohol in lozenge form.

14. Urging approval of internal analgesics for relief of minor sore throat pain, two comments stated that internal analgesics have been properly used for many years to treat this minor condition. The comments provided several references to support this claim. The comments pointed out, however, that the Advisory Review Panel on Over-the-Counter (OTC) Internal Analgesic and Antirheumatic Products (Internal Analgesic Panel) placed such claims for internal analgesics in Category II. The comments disagreed with the recommendation, noting that the review of drugs for relief of minor sore throat pain was assigned to the Oral Cavity Panel. Therefore, the comments considered it appropriate to include internal analgesics for this indication in the monograph for OTC oral health care drug products.

The agency notes that the Oral Cavity Panel was charged with evaluating ingredients and labeling used in OTC anesthetic/analgesic preparations intended strictly for local, topical application to the mucous membranes of the oral cavity (mouth) and pharynx (throat). The Oral Cavity Panel either classified ingredients and labeling for anesthetic/analgesic preparations that act systemically as Category II (47 FR 22765), or it deferred those ingredients known or presumed to be absorbed and to act systemically to other panels for evaluation.

The agency agrees with the Oral Cavity Panel's recommendation that systemic relief of minor sore throat pain should be addressed in the rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products and has transferred all comments and associated submissions regarding internal analgesics for the relief of minor sore throat pain to that rulemaking (Docket No. 77N-0094) (Ref. 1). The agency's findings on this subject will be addressed within the context of the rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products in a future issue of the *Federal Register*. The agency discusses the use of topically applied aspirin for the relief of minor sore throat pain in this tentative final monograph. (See comment 15 below.)

Reference

(1) Memo No. 00006, Docket No. 77N-0094, Dockets Management Branch.

15. Two comments agreed with the Panel's majority report on the safety and effectiveness of aspirin that "aspirin is safe and effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat

* * *." (47 FR 22796). One comment concurred with the majority of the Panel that the speed of the response excluded a systemic analgesic effect resulting from the absorption of aspirin. Both comments stated that these conclusions were based on a careful review of the published literature, the submissions to the Panel, and the original, independent work of one of the Panel members.

One comment maintained that several of the safety issues raised in the Panel's minority report on aspirin as a topical analgesic were not unique to aspirin in chewing gum form and were not supported by the quoted references. The comment then listed the following examples:

(1) The effect of a conventional aspirin tablet applied directly to the mucous membranes of the mouth (47 FR 22799) has little relevance to the evaluation of the safety of aspirin in chewing gum form.

(2) One of the reports of mouth ulcers associated with aspirin in chewing gum form cited in the minority report (47 FR 22799) involved an obvious abuse situation in which the consumer had chewed 8 to 10 gum tablets a day for 6 to 10 weeks.

(3) Two references to several cases of massive hemorrhage from the tonsillar bed following topical application of a "gargle of aspirin-containing chewing gum" (47 FR 22800) have been incorrectly quoted. The comment stated that neither reference involves the topical application of a "gargle of aspirin containing chewing gum." It asserted that one of these references presented the results of laboratory experiments in dogs treated with a variety of substances, including aspirin, placed in the gastrointestinal tract. The other reference discusses the effect of an aspirin suspension intended for systemic absorption.

(4) The comment quoted the following statements from the Panel's minority report (47 FR 22800): "Hemorrhage was observed in 8 percent of 100 posttonsillectomy patients medicated with aspirin * * *. No bleeding occurred in 100 patients medicated with acetaminophen." The comment stated that this report involved an aspirin suspension and therefore was not applicable to aspirin in chewing gum form.

(5) A study cited in the Panel's minority report (47 FR 22800) described a high incidence of post-tonsillectomy bleeding in children treated with an aspirin-containing chewing gum. The comment stated that this study involved a select subgroup of the population, and that it would be more sensible to restrict

the use of aspirin-containing gum by this small subgroup than to deny the rest of the population the benefit of such a product. The comment maintained that the warnings included in § 356.50(c)(2)(iv) of the Panel's recommended monograph prohibit the use of chewable aspirin-containing drug products immediately following oral surgery.

The comment maintained that the safety concerns voiced by the minority of the Panel were not adequately documented and that some concerns would be more properly handled by labeling than by removal of the product. The comment requested that aspirin in a chewing gum dosage form remain in Category I for safety as a topical analgesic consistent with the conclusion of the majority of the Panel.

The majority of the Panel concluded that aspirin incorporated in a chewing gum base is safe and effective as an OTC anesthetic/analgesic ingredient for topical use on the mucous membranes of the mouth and throat. However, the minority of the Panel members concluded that there were insufficient data available to permit final classification of the safety and effectiveness of aspirin as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat. The minority of the Panel members had serious reservations about the safety of topically applied aspirin used in the oral cavity and believed that aspirin has no known topical anesthetic or analgesic activity. They felt that any analgesic effect from aspirin applied topically in the oral cavity is ultimately due to systemic absorption and not to topical application.

In the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products, to be published in a future issue of the *Federal Register*, the agency will discuss the systemic effectiveness of aspirin in chewing gum form for the relief of many kinds of pain including sore throat pain. However, with regard to the effectiveness of aspirin as a topical analgesic active ingredient for use on the mucous membranes of the mouth and throat, the agency disagrees with the comments and agrees with the minority of the Oral Cavity Panel members that there are insufficient data available to permit final classification.

The conclusion of the majority of the Panel members that aspirin is an effective topical analgesic ingredient was based upon a Panel member's oral presentation to the Panel describing his independent research, which was later published in the literature (Ref. 1), and

upon a study by Scott (Ref. 2) indicating that aspirin applied topically to dentin in artificial cavities in a cat's incisor inhibits steady state discharge and response to a brief heat stimulus. However, the agency believes that aspirin's mode (or modes) of action have not been well elucidated and another recent publication by Adriani, Minokadeh, and Naraghi (Ref. 3), which was not available to the Panel, contradicts the results of the Panel member's research mentioned above (Ref. 1). This more recent study used an established method of algimetry in which an electric current is applied to the tip of the tongue as a painful stimulus and found that a saturated solution of aspirin has no more analgesic effect on the tip of the tongue than the placebo (saline).

In the advance notice of proposed rulemaking for OTC external analgesic drug products (published in the *Federal Register* of December 4, 1979; 44 FR 69846 to 69847), the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products (Topical Analgesic Panel) stated that aspirin possesses no topical anesthetic activity and does not block the neuronal membranes as do topical anesthetics such as benzocaine. That Panel concluded that although percutaneous absorption of salicylate occurs, any subsequent analgesic effect is systemic and not local. In the advance notice of proposed rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products (published in the *Federal Register* of July 8, 1977; 42 FR 35376 to 35377), the Internal Analgesic Panel determined that although aspirin has historically been used as a gargle for the treatment of minor sore throat pain, aspirin or any analgesic in a gum base has not been adequately tested for effectiveness in the treatment of sore throat pain. That Panel deferred aspirin in a chewing gum base and the use of aspirin as a gargle for a local topical effect to the Oral Cavity Panel for evaluation (42 FR 35376 and 47 FR 22801). Although the topical use of aspirin in chewing gum dosage form for the relief of minor sore throat pain is discussed in this notice, the agency has determined that the role of internal analgesic drug products, including the systemic effects of aspirin in a chewing gum form, and their labeling for the relief of minor sore throat pain will be addressed within the context of the rulemaking for OTC internal analgesic drug products in a future issue of the *Federal Register*. (See comment 14 above.)

The agency believes that because there was a divided recommendation by the Oral Cavity Panel, because two other Panels concluded that aspirin has no known local analgesic effect, and because the referenced publications (Refs. 1 and 3) present conflicting data, a reasonable question exists regarding the ability of aspirin to exert a topical analgesic effect on the oral mucosa. Furthermore, it should be noted that the agency is not aware of any OTC aspirin products in tablet or lozenge dosage form that are marketed specifically for topical use. The OTC aspirin product in a chewing gum dosage form that was submitted to the Internal Analgesic Panel as an internal analgesic and subsequently was submitted to the Oral Cavity Panel is not specifically labeled for topical oral use. The product's current indications include temporary relief of minor sore throat pain, headache, aches and pains of colds, and muscular aches and pains (Ref. 4). Therefore, the agency is classifying aspirin when labeled for topical use in Category III for effectiveness as an analgesic for use in the oral cavity for the relief of pain associated with minor sore throat. The agency recommends that testing using protocols similar to those employed in the study by Adriani, Minokaden, and Naraghi (Ref. 3) are necessary to demonstrate that aspirin produces a statistically and clinically significant topical analgesic effect in the oral cavity. Manufacturers may want to discuss their proposed protocol(s) with the agency prior to performing studies. The agency invites further comments and data on this use of aspirin.

With regard to the safety of aspirin for topical use in the oral cavity, the agency accepts the conclusion of the majority of the Panel and agrees with the comments that aspirin in a chewing gum base is safe for topical use on the mucous membranes of the mouth and throat when labeled with adequate warnings against misuse. The agency also agrees with the one comment that two references (Refs. 5 and 6) cited in the Panel's minority report (47 FR 22800) are misquoted. However, both articles do point out that aspirin is irritating to mucous membranes and emphasize the need for proper labeling.

Also, contrary to the comment's contention, two publications (Refs. 7 and 8) cited in the minority report (47 FR 22799) did involve aspirin in a chewing gum base. In one case report, aspirin in a chewing gum and aspirin tablets were both applied to the roof of the mouth and resulted in local ulceration within a week. Upon removal of both forms of medication, the ulceration healed (Ref.

7). In this report, the lesions could have been caused by either form of aspirin or the unusual combination of both. In the other case report, a consumer chewed 8 to 10 gum tablets a day for 6 to 10 weeks (Ref. 8). Although prolonging treatment with aspirin-containing chewing gum for 6 to 10 weeks is an abusive situation, the ulcers were reported to have been present for 6 to 10 weeks also. This indicates that the ulcers could have been caused by or aggravated by misuse of the aspirin-containing chewing gum. The ulcers healed promptly when the gum was discontinued. These two reports, as well as another mentioned by the comment (Ref. 9), indicate the topical irritant action of salicylates on the mucous membranes of the mouth and point out the necessity for adequate warnings against misuse.

The agency acknowledges that aspirin increases bleeding time and inhibits platelet aggregation (42 FR 35384 and 47 FR 22797). In addition, aspirin-related hemorrhage after oral surgery is a well-documented occurrence (Refs. 10, 11, and 12). The agency agrees with both the Panel and the one comment that aspirin in any form should not be used after oral surgery or tonsillectomy (47 FR 22798 and 22801). In addition, the agency agrees with the Panel that aspirin should not be used either systemically or topically when mucous membranes are highly inflamed or abraded, when there are eroded, bleeding lesions, or when the consumer is on anticoagulant medication (47 FR 22798). In order to address the above-mentioned safety concerns, the majority of the Panel suggested the following warnings for aspirin-containing oral health care drug products in its recommended monograph:

Section 356.60(c)(2)(ii) "Do not use if you have a bleeding problem or if you are taking an anticoagulant drug."

Section 356.60(c)(2)(iii) "Do not use without a physician's or dentist's advice if your mouth is highly irritated or ulcerated."

Section 356.60(c)(2)(iv) "Do not use after surgery in the mouth or throat."

The agency believes that these warnings, with some minor modifications, are sufficient to protect the consumer against any adverse effects resulting from the use of aspirin in a chewing gum base in the oral cavity. The Internal Analgesic Panel, in its report, recommended that all aspirin products formulated to be chewed before swallowing (chewable tablets or gums) should contain the following warning: "Do not take this product for at least 7 days after tonsillectomy or oral surgery except under the advice and supervision of a physician" (47 FR

35385). The agency believes that prohibiting the use of aspirin for 7 days after oral surgery is reasonable and is recommending this as a required warning.

The agency also believes that the recommended warnings can be shortened by combining them into a single statement and that the phrase "except under the advice and supervision of a dentist or doctor" should be added to the combined warning. In addition, the agency believes that consumers may not understand the meaning of the word "anticoagulant." In the tentative final monograph for OTC internal analgesic drug products, to be published in a future issue of the *Federal Register*, the agency plans to explain the word "anticoagulation" by placing the words "thinning the blood" in parentheses after it. The same approach is being recommended in this tentative final monograph also.

The agency is recommending that the following warning be included in the final monograph for OTC oral health care drug products if aspirin in a chewing gum base becomes a Category I ingredient in this rulemaking:

Do not use if you have a bleeding problem, if you are taking a prescription drug for anticoagulation (thinning the blood), if your mouth is highly irritated or ulcerated, or for at least 7 days after surgery in the mouth or throat except under the advice and supervision of a dentist or doctor.

In conclusion, in this tentative final monograph, the agency is classifying aspirin in a chewing gum base in Category III for effectiveness and in Category I for safety as a topical anesthetic/analgesic active ingredient for use in the oral cavity. If this ingredient is included in the final monograph for OTC oral health care drug products, the agency will consider the need for any additional warnings that are required for aspirin in the final monograph for OTC internal analgesic drug products.

References

- (1) Loch, W.E.E., et al., "Local Aspirin Analgesia in the Oral Cavity," *Clinical Pharmacology and Therapeutics*, 33:642-648, 1983.
- (2) Scott, D., Jr., "Aspirin: Action on Receptor in the Tooth," *Science*, 161:180-181, 1968.
- (3) Adriani, J., S. Minokadeh, and M. Naraghi, "Effectiveness on Mucous Membranes of Topically Applied Antipyretic Analgesics," *Regional Anesthesia*, 6:47-50, 1981.
- (4) OTC Volume 13ATFM.
- (5) Davenport, H.W., "Gastric Mucosal Injury by Fatty and Acetylsalicylic Acids," *Gastroenterology*, 46:245-253, 1964.

(6) Reuter, S.H., and W.W. Montgomery, "Aspirin vs. Acetaminophen after Tonsillectomy: A Comparative Double-Blind Study," *Archives of Otolaryngology*, 80:214-217, 1964.

(7) Kawashima, Z., R.H. Flagg, and D.E. Cox, "Aspirin-Induced Oral Lesion: Report of Case," *Journal of the American Dental Association*, 91:130-131, 1975.

(8) Claman, H.N., "Mouth Ulcers Associated with Prolonged Chewing of Gum Containing Aspirin," *Journal of the American Medical Association*, 202:651-652, 1967.

(9) Roth, J.L.A., et al., "Topical Action of Salicylates in Gastrointestinal Erosion and Hemorrhage," *Gastroenterology*, 44:146-158, 1963.

(10) Singer, R., "Acetylsalicylic Acid, A Probable Cause for Secondary Post-Tonsillectomy Hemorrhage," *Archives of Otolaryngology*, 42:19-20, 1945.

(11) Hersh, R. A., "A Clinical Study Comparing the Incidence of Postoperative Bleeding in Patients Using Salicylate-containing Analgesics versus Acetaminophen Analgesics," *Bulletin of the Bergen County Dental Society*, 40:6-8 and 16, 1974.

(12) Fox, S. L., and G. B. West, "Vitamin K and Late Tonsillar Hemorrhage," *Laryngoscope*, 51:564-574, 1947.

16. One comment requested that the agency revise the Category I dosage schedule for topical aspirin as follows:

Adults—325-500 mg every 4 hours as needed, not to exceed 3,900 mg in 24 hours.

Children 9 to 11—200-500 mg every 4 hours as needed, not to exceed 2,030 mg in 24 hours.

Children 6 to 8—130-325 mg every 4 hours as needed, not to exceed 1,625 mg in 24 hours.

The comment maintained that most of the efficacy and safety data and experience submitted to the Panel for evaluation was based upon a formulation containing 227 mg aspirin per gum tablet and that this concentration is not included in the Panel's recommended dosage schedule. The comment stated that the proposed revision takes into account the actual Category I dosage range (130 to 500 mg) officially approved by the Panel at its December 14, 1979 meeting, provides an age-dependent dosage as proposed in the Panel's majority report on aspirin, and provides a Category I dosage range that includes the currently available products.

The agency believes that a specific dosage schedule for topically applied aspirin in a chewing gum base cannot be proposed at this time because of the absence of actual study data to support such a dosage schedule. Although the comment proposes doses as low as 130 mg aspirin, no data were submitted to the Panel or the agency that would support the topical analgesic

effectiveness of such a low dose of aspirin. As the comment stated, most of the information submitted to the Panel for evaluation (Ref. 1) was derived from a product containing 227 mg aspirin per tablet in a chewing gum base. Other data submitted to the agency regarding the topical analgesic effectiveness of aspirin (Ref. 2) were based on a dose of 210 mg of aspirin, but that amount was in an aqueous solution, not a chewing gum base. Neither dose was shown to be effective.

Therefore, the agency disagrees with the Panel's Category I classification of aspirin in a chewing gum base as an oral health care topical analgesic/anesthetic drug product and is proposing a Category III classification for this ingredient. (See comment 15 above.) Consequently, the agency is not proposing a dosage schedule for this ingredient as an oral health care drug product. In the event that aspirin in a chewing gum base reaches monograph status (Category I), the agency will establish an appropriate dosage at that time, based on the supporting data.

References

- (1) OTC Volume 130104.
- (2) Loch, W. E. E., et al., "Local Aspirin Analgesia in the Oral Cavity," *Clinical Pharmacology and Therapeutics*, 33:642-648, 1983.

17. One comment maintained that because aspirin in a chewing gum base can be labeled for use as an internal analgesic and/or a topical analgesic, provisions should be made to allow the warnings to be consolidated. It stated that the 2-day administration restriction should be identified as applicable only when treating sore throat, and that the 5-day to 10-day restriction would be applicable to internal analgesic use.

In this document, aspirin is classified in Category III for effectiveness as a topical anesthetic/analgesic ingredient. (See comment 15 above.) However, if aspirin is included in the final monograph for OTC oral health care drug products as well as in the final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products, a product could display labeling from both monographs. For example, manufacturers may indicate on the label that the 2-day usage limitation is applicable only when treating sore throat, and that the 5-day to 10-day restriction on use applies when aspirin is used as an internal analgesic for the temporary relief of minor aches and pains such as headaches. Manufacturers may combine warnings, indications, and directions, respectively, to eliminate duplicative words or phrases so that the

resulting information is clear and understandable.

18. One comment maintained that the Panel's recommended warning in § 356.50(c)(2)(v), "Provide good fluid intake when aspirin or aspirin-containing preparations are used" is unnecessary for products containing aspirin in a chewing gum form because the process of chewing generates sufficient saliva to prevent pharyngeal or esophageal irritation. The comment added that the topical effect of aspirin could be diminished by the administration of liquids immediately after chewing the gum tablets. Therefore, the comment requested that the agency delete this warning for these drug products.

In this document, aspirin is classified as Category III for effectiveness as a topical anesthetic/analgesic ingredient. (See comment 15 above.) However, the agency agrees with the comment that if aspirin in a chewing gum base is shown to have a topical analgesic effect in the oral cavity, that effect could be negated or diminished by drinking water after chewing the tablets. In addition, the agency believes that the process of chewing the aspirin-containing gum produces enough saliva to prevent any irritation the aspirin might cause in the oral cavity. Therefore, if aspirin in a chewing gum base is included as a topical anesthetic/analgesic ingredient in the final monograph for OTC oral health care drug products, the agency proposes that the warning recommended by the Panel in § 356.50(c)(2)(v) should not be required.

C. General Comments on Debriding Agent/Oral Wound Cleanser Drug Products

19. Noting that the Dental Panel and the Oral Cavity Panel reviewed some of the same ingredients (i.e., carbamide peroxide and hydrogen peroxide) used at similar concentrations at the same or adjacent sites in the oral cavity, one comment pointed out similarities between the Oral Cavity Panel's definition of a debriding agent (47 FR 22927) and the Dental Panel's definition of an oral wound cleanser (44 FR 63289). The comment stated that the removal of foreign material by debriding agents and by oral wound cleansers is accomplished by utilizing oxygen-releasing moieties whose foaming action mechanically and chemically removes devitalized tissue, mucus, phlegm, etc. The comment claimed that it is confusing and misleading to consumers when the same ingredients, used for the same therapeutic purpose at the same or adjacent sites, have different labeling. The comment requested that the

definitions, warnings, and indications be consistent between the two monographs.

The agency has reviewed the definitions, warnings, and indications for debriding agents in the Oral Cavity Panel's report (47 FR 22927 to 22929) and for oral wound cleansers in the tentative final monograph for OTC oral mucosal injury drug products (48 FR 33992 to 33993). The agency agrees with the comment that there are many similarities between debriding agents and oral wound cleansers. The Dental Panel defined an oral wound cleanser as "a nonirritating preparation that assists (physically or chemically) in the removal of foreign material from minor oral wounds and does not delay wound healing" (44 FR 63289). The Oral Cavity Panel defined a debriding agent as "an agent which causes removal of foreign material or devitalized or contaminated tissue from or adjacent to a traumatic or infected lesion to expose surrounding healthy tissue" (47 FR 22927).

Debriding agents remove debris by either a mechanical, chemical, biochemical, or physicochemical mechanism of action, such as the release of oxygen, the lowering of pH, and by osmosis (47 FR 22905). Oral wound cleansers, generally, achieve the physical removal of debris by releasing oxygen, which results in a foaming action (44 FR 63280). The agency believes that the therapeutic effect of debriding agents and oral wound cleansers is the same, i.e., removal of foreign or devitalized materials from minor wounds or inflammations in the oral cavity.

Because of the overlap and similarities in the definitions, therapeutic effect, mechanisms of action, and site of action of oral wound cleansers and debriding agents, the agency has decided to incorporate part of the rulemaking for OTC oral mucosal injury drug products into this tentative final monograph for oral health care drug products. The tentative final monograph for OTC oral mucosal injury drug products was published in the *Federal Register* of July 26, 1983 (48 FR 33984) and proposed conditions under which OTC oral wound cleansers and oral wound healing agents would be generally recognized as safe and effective. Only oral wound cleansing ingredients and labeling are included in this segment of the oral health care tentative final monograph. The combination of an oral wound cleanser and an oral antiseptic proposed in § 353.20(b) of the tentative final monograph for OTC oral mucosal injury drug products will be addressed in the

second segment (i.e., oral health care antimicrobial drug products) of this rulemaking. Oral wound healing agents were addressed in a final rule published in the *Federal Register* of July 18, 1986 (51 FR 26112). Definitions relevant to oral wound cleansers are being proposed in § 356.3 of this tentative final monograph. Indications, warnings, and directions relevant to oral wound cleansers are incorporated into § 356.70 of this tentative final monograph, which pertains to debriding agents. The resultant class of ingredients will hereafter be identified as oral health care debriding agent/oral wound cleansers.

20. One comment stated that although it does not recognize a therapeutic benefit from the use of cleansing and debriding agents, it is generally accepted that several agents are effective at cleansing and debriding the oral mucosa. The comment agreed with the Panel's recommendations that the following agents are safe and effective for those indications: hydrogen peroxide, sodium bicarbonate, and carbamide peroxide in anhydrous glycerin.

One reply comment noted that the comment partially agreed with the Panel's findings on cleansing and debriding agents, but that the comment did not recognize the therapeutic benefit of debriding agents, as did the Panel, and that both the Oral Cavity Panel and the Dental Panel placed debriding agents in Category I. The reply comment urged the agency to maintain the Category I indications for debriding agents.

The agency agrees with the Panel's conclusion that debriding agents are drugs that provide a therapeutic benefit to the target population because they aid in the symptomatic relief of sore mouth and sore throat by removing thick, tenacious mucus, purulent secretions, and debris that may stimulate pain receptors in ulcerated or inflamed areas of the mouth and throat (47 FR 22905). Therefore, the agency is proposing Category I indications for oral health care debriding agents in this tentative final monograph.

21. One comment agreed that the Panel's recommended drug claims are appropriate for debriding agents, but argued that these ingredients are also useful as mechanical cleansers that perform an important cosmetic function. The comment requested that debriding agents be available for use in oral hygiene products intended solely for cleansing the mouth for cosmetic purposes.

Products marketed only as cosmetics are not subject to this rulemaking.

Because the final monograph will cover only the drug use of the active ingredients listed therein, the concentration range, limitations, statements of identity, indications, warnings, and directions established for these ingredients in the monograph will not apply to the use of the same ingredients in products intended solely as cosmetics. However, if a product is intended for both drug and cosmetic use, it must conform to the requirements of the final monograph. In addition to the indications allowed for OTC oral health care drug products, such products may also bear appropriate labeling for cosmetic uses, in conformity with section 602 of the Act (21 U.S.C. 362) and the provisions of 21 CFR Parts 701 and 740.

In accordance with the final rule on the agency's "exclusivity policy" (51 FR 16258), it is the agency's view that cosmetic claims may not appear within the boxed area designated "APPROVED USES." As discussed at 51 FR 16264 (paragraph 14), cosmetic claims may appear elsewhere in the labeling but not in the box should manufacturers choose the labeling alternative provided in § 330.1(c)(2) (i) or (iii) for labeling cosmetic/drug products.

22. Two comments disagreed with the Panel's Category II classification of sodium perborate monohydrate as an oral health care debriding agent (47 FR 22908). One comment stated that the Panel did not thoroughly evaluate the available data. The other comment stated that a review of the information in the Panel's report did not justify a Category II classification for sodium perborate monohydrate from the standpoint of safety.

In the tentative final monograph for OTC oral mucosal injury drug products (48 FR 33984), the agency concluded that sodium perborate monohydrate is safe for use in the oral cavity as an oral wound cleanser if the ingredient is limited to dosage units of not more than 1.2 g (to be dissolved in 30 mL of water) and if its use in children under 6 years of age is prohibited. The agency also concluded that 1.2 g sodium perborate monohydrate releases 1.3 to 1.4 percent hydrogen peroxide (a Category I oral wound cleanser) and therefore may be considered an effective oral wound cleanser because the activity of hydrogen peroxide-containing compounds is a physical phenomenon based on the foaming action caused by the release of molecular oxygen when the compound comes into contact with tissue or saliva (48 FR 33986). The foaming action loosens and lifts out debris, thus cleansing the wound.

As stated in comment 19 above, the agency is incorporating part of the rulemaking on OTC oral mucosal injury drug products into the sections of this tentative final monograph pertaining to debriding agents. Therefore, the agency is proposing a Category I classification for sodium perborate monohydrate as a debriding agent/oral wound cleanser. The agency also concludes that the directions proposed for sodium perborate monohydrate as an oral wound cleanser are appropriate for sodium perborate monohydrate as a debriding agent/oral wound cleanser. (See § 353.50(d)(3) at 48 FR 33993.) Therefore, with minor format modifications, those directions are being proposed in this tentative final monograph.

23. One comment referred to the Oral Cavity Panel's statement that long-term, daily use of peroxides can cause gingival inflammation, tooth decalcification, and black hairy tongue (47 FR 22875). The comment maintained that the statement lacked the scientific clarification found in the report on OTC oral mucosal injury drug products (44 FR 63281), i.e., that only high concentrations (6 to 30 percent) of hydrogen peroxide may cause these adverse reactions. The comment stated that these adverse reactions are not associated with currently marketed products containing 3 percent hydrogen peroxide and 10 to 15 percent carbamide peroxide. The comment concluded that long-term safety is not at issue because debriding agents and oral wound cleansers are generally used intermittently for a week or less, and that the literature does not support a lack of safety in humans during either long-term or short-term use.

The agency notes that the Oral Cavity Panel provided a more detailed explanation of the possible adverse effects from the use of high concentrations of peroxide (6 to 30 percent) (47 FR 22875 to 22877) than the Dental Panel (44 FR 63281 to 63282). The Oral Cavity Panel discussed more studies showing adverse changes in the gingival tissue and the tongue as a result of the frequent use of hydrogen peroxide at high concentrations. The Dental Panel mentioned only a few of the studies showing adverse effects. Therefore, the agency rejects the comment's contention that the report on OTC oral mucosal injury drug products contains a clearer scientific explanation of the adverse effects of high concentration of hydrogen peroxide than the report on OTC oral health care drug products.

The Oral Cavity Panel was concerned about the chronic use of hydrogen

peroxide in such products as antimicrobial-containing mouthwashes as well as the short-term use in debriding agents. The Dental Panel was only concerned about the short-term use of hydrogen peroxide in oral wound cleansers. One reference cited by the Oral Cavity Panel stated that hydrogen peroxide should not be used as a mouthwash for long periods of time because of its acidity and because hydrogen peroxide at low concentrations can decalcify teeth (Ref. 1).

Because both Panels concluded that concentrations of hydrogen peroxide up to 3 percent are safe for short-term use only, adverse reactions resulting from the use of higher concentrations are not relevant to this segment of the oral health care rulemaking. However, possible adverse reactions resulting from the chronic use of hydrogen peroxide at low concentrations are relevant to the antimicrobial segment of the rulemaking for OTC oral health care drug products because antimicrobial-containing mouthwashes may be used for extended periods of time. Possible adverse reactions resulting from the chronic use of hydrogen peroxide as a mouthwash will be discussed in the antimicrobial segment of this rulemaking. Therefore, the agency disagrees with the comment that long-term safety is not an issue.

Reference

(1) Dobbs, E.C., "Pharmacology and Oral Therapeutics," 12th Ed., C.V. Mosby Co., St. Louis, p. 427, 1961.

24. One comment requested that the "description" of carbamide peroxide in § 356.14(a) be revised to indicate that the active ingredient is carbamide peroxide in anhydrous glycerin and that § 356.54(d)(1) be revised to agree with the Panel's description of carbamide peroxide in its discussion at 47 FR 22905. The comment explained that it is incorrect to describe carbamide peroxide as a solution in water, as in the directions in § 356.54(d)(1), because the ingredient is not available as an aqueous solution inasmuch as it degrades to urea and hydrogen peroxide when contacting water. Referring to § 356.14(a), the comment explained that carbamide peroxide alone is also incorrect because degradation occurs if carbamide peroxide is present as a single unstabilized ingredient.

The agency concludes that §§ 356.14(a) and 356.54(d)(1) of the advance notice of proposed rulemaking should be revised as requested by the comment. Because carbamide peroxide is an unstable compound that breaks down if exposed to air or water, it is

stabilized by formulation in anhydrous glycerin (47 FR 22863). (Anhydrous glycerin may be prepared by heating glycerin USP at 150 °C for 2 hours to drive off the moisture content.) Therefore, in this tentative final monograph, the agency is proposing that § 356.16(a) read as follows: "Carbamide peroxide in anhydrous glycerin." In addition, because carbamide peroxide is unstable in water (44 FR 63281), and it is neither formulated in water nor used in aqueous solution, the agency is not including any reference to a solution containing carbamide peroxide in water in the directions proposed in § 356.70(d)(1) of this tentative final monograph. (See comment 27 below.)

25. One comment noted that, although the definition of a debriding agent refers to its action on unhealthy tissues (47 FR 22927), the indication for a debriding agent recommended by the Panel in § 356.54(d) (47 FR 22929) limits use only to "Aids in the removal of phlegm, mucus, or other secretions in the temporary relief of discomfort due to occasional sore throat and sore mouth." The comment suggested that the indication be expanded to include the activity noted in the definition section regarding removal of oral secretions, foreign material, and devitalized or contaminated tissue from or adjacent to a lesion or irritated tissue which can occur in sore mouth, sore throat, and sore gums.

The comment suggested that § 356.54(b) be revised by adding the following:

(1) "For temporary use in cleansing of wounds caused by minor oral irritation or injury such as following minor dental procedures or from dentures or orthodontic appliances."

(2) "For temporary use in the cleansing of gum irritation due to erupting teeth (teething)."

The first indication suggested by the comment is similar in content to the indication proposed by the agency in § 353.50(b)(1)(i) of the tentative final monograph for OTC oral mucosal injury drug products (48 FR 33993). The second indication proposed by the comment is identical to the professional labeling proposed in § 353.80 of that tentative final monograph. The agency is incorporating the proposed indications and professional labeling for oral wound cleansers into §§ 356.70 and 356.80 of this tentative final monograph. (See comment 19 above.) The comment's concern has been addressed by this action.

26. One comment stated that the Oral Cavity Panel recommended that debriding agents be used no longer than 2 days without professional supervision,

whereas the Dental Panel proposed that the same active ingredients, when used as oral wound cleansers, should not be used longer than 7 days without professional supervision (44 FR 63282). Adding that the 7-day use limit provided for oral wound cleansers better approximates the healing time needed to effectively repair mucous membrane irritation and lesion, the comment cited the American Dental Association's notation that mild and asymptomatic oral lesions generally require 5 to 10 days for healing (Ref. 1). The comment recommended that the 2-day limit proposed for debriding agents be revised to the 7-day limit recommended for oral wound cleansers.

The comment also noted that the Oral Cavity Panel recommended that children can use debriding agents at age 3 (47 FR 22906), whereas the Dental Panel stated that children can use oral wound cleansers at age 2 (44 FR 63281). The comment recommended the use of debriding agents by children 2 years of age and older because limited toxicity is associated with the Category I ingredients and because teething in children may necessitate the use of a "debriding agent/oral wound cleanser." The comment further stated that it is unnecessarily alarming to include the age limitations in the warnings section and recommended that reference to age be deleted from the warnings section of the labeling of debriding agents because the age limit is included in the directions.

In addition, the comment requested that the reference in § 356.54(c)(1)(ii) to a rash appearing on the skin after use of a debriding agent be deleted because the appearance of a rash is neither noted in, nor supported by, the safety reviews of any of the debriding agents.

Accordingly, the comment suggested the following warning for OTC oral health care debriding agents:

(i) If improvement is not seen after 7 days of use, discontinue use and see a physician. Severe or persistent sore throat, or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly.

The agency has decided to incorporate portions of the rulemaking for OTC oral mucosal injury drug products into this tentative final monograph and to consider debriding agents and oral wound cleansers as one therapeutic class called debriding agent/oral wound cleansers. (See comment 19 above.) In addition, because this therapeutic class of ingredients (i.e., debriding agent/oral wound cleansers) has not historically been used for the relief of sore throat symptoms and

because the therapeutic benefits of using these ingredients for sore throat symptoms are not apparent, the agency is proposing that debriding agent/oral wound cleansers be limited to use only in relieving symptoms associated with a sore mouth.

The Oral Cavity Panel recommended that all OTC oral health care drug products be used for sore throat in addition to sore mouth. Therefore, the Panel recommended the 2-day use limit for all of these products because of the risk of serious illness if appropriate treatment of a sore throat is delayed. However, in its discussion of sore mouth, the Panel stated that although sore mouth may denote the presence of a condition that requires diagnosis and treatment by a physician, in most cases it is caused by minor ulcerations and other benign conditions that are self-limited and generally heal spontaneously in 7 to 10 days (47 FR 22774 to 22776).

In the tentative final monograph for OTC oral mucosal injury drug products, the agency agreed with the Dental Panel that even though the presence of an oral lesion or inflammation can be a symptom of a serious disease, oral wound cleansers may be used for up to 7 days without consulting a physician or dentist (48 FR 33993). Because debriding agent/oral wound cleansers in this tentative final monograph are indicated only for use to relieve the symptoms associated with sore mouth, and sore mouth is unlikely to be indicative of a serious health threat, the agency is proposing that debriding agent/oral wound cleansers can be safely used to relieve the symptoms associated with sore mouth for up to 7 days before seeking professional guidance.

The agency agrees with the comment that the lowest age for use of debriding agents by children should be 2 years. These active ingredients are applied topically and are only inadvertently ingested. In general, they exhibit low toxicity (47 FR 22905). Therefore, the agency is proposing that the lower age limit for use of OTC oral health care debriding agent/oral wound cleansers except sodium perborate monohydrate (see comment 22 above) should be 2 years. In addition, the agency agrees with the comment that because the age limitations are in the directions, they are not necessary in the warning statements.

The agency believes that the comment has misinterpreted the warning statement concerning the appearance of a rash. The Oral Cavity Panel's warning statement is not meant to imply that the appearance of a rash is an adverse reaction caused by the use of a

debriding agent/oral wound cleanser. Rather, the appearance of a rash may be a symptom of serious diseases, such as scarlet fever, measles, or chicken pox, which can appear after initial sore mouth symptoms and which require professional advice and supervision (47 FR 22776). Thus, reference to a rash is an appropriate part of the warning statements for debriding agent/oral wound cleansers.

The agency believes that, with minor modification, the warning proposed in § 353.50(c) of the tentative final monograph for OTC oral mucosal injury drug products is appropriate for the oral health care debriding agent/oral wound cleansers included in this tentative final monograph and that this warning can be combined with the Oral Cavity Panel's recommended warning in § 356.54(c)(1)(ii). Therefore, the agency is proposing to replace the warnings recommended by the Oral Cavity Panel in § 356.54(c)(1) with the following warning: "Do not use this product for more than 7 days unless directed by a dentist or doctor. If sore mouth symptoms do not improve in 7 days; if irritation, pain, or redness persists or worsens; or if swelling, rash, or fever develops, see your dentist or doctor promptly." This warning is proposed in § 356.70(c)(1) of this tentative final monograph.

Reference

(1) "Accepted Dental Therapeutics," 38th ed., Council on Dental Therapeutics of the American Dental Association, Chicago, p. 292, 1979.

27. One comment stated that the directions recommended by the Oral Cavity Panel for carbamide peroxide do not reflect the labeling and use of the products submitted to the agency for review. The comment suggested that the directions for carbamide peroxide as an oral wound cleanser in § 353.50(d)(1) of the Dental Panel's recommended monograph for OTC oral mucosal injury drug products would, if modified to include use as a rinse in addition to use by direct application, be appropriate for carbamide peroxide as a debriding agent. The comment requested that the agency revise the directions for carbamide peroxide as a debriding agent and make the directions for debriding agents in this tentative final monograph consistent with the directions for oral wound cleansers in the recommended monograph for OTC oral mucosal injury drug products.

As discussed in comment 19 above, the agency is incorporating portions of the tentative final monograph for OTC oral mucosal injury drug products into this monograph. The agency believes

that, with minor format changes, the directions it proposed for carbamide peroxide and hydrogen peroxide as oral wound cleansers (48 FR 33993) are also appropriate for those ingredients when used as debriding agent/oral wound cleansers. The agency also believes that these directions reflect the labeling and use of products submitted to the agency for review. Therefore, with minor format changes, the directions proposed in § 353.50(d)(1) and (2) of the tentative final monograph for OTC oral mucosal injury drug products are being proposed in this tentative final monograph.

D. General Comments on Decongestant and Expectorant Drug Products

28. One comment maintained that the Oral Cavity Panel misconstrued the application of decongestants and of expectorants in the products that it reviewed. The comment stated that decongestant ingredients have their activity in relieving nasal congestion via absorption and systemic distribution, and expectorant drugs have their activity in relieving bronchial secretion problems via reflex action stimulated in the stomach or via action in the pulmonary tree by absorption and systemic distribution. The effectiveness of these ingredients should not be part of the oral health care monograph, the comment concluded, but should be referred to the monograph for OTC cough-cold drug products.

The Oral Cavity Panel deferred most of the decongestant active ingredients to the Cough-Cold Panel because most of these ingredients are administered orally or topically (47 FR 22909). However, the Oral Cavity Panel found that some decongestant ingredients were combined with oral health care ingredients in the form of lozenges and felt that these decongestant ingredients could have topical activity on the mucous membranes of the mouth and throat. The Oral Cavity Panel did review two submissions on products containing phenylephrine hydrochloride and phenylpropanolamine hydrochloride as decongestants in lozenge form (Ref. 1). However, the two ingredients were present in lozenges that were labeled for the relief of nasal congestion, not congestion of the mouth or throat. Therefore, the agency agrees with the comment that the Oral Cavity Panel misconstrued the application of decongestant ingredients in these oral health care drug products and the data on decongestants should be referred to the nasal decongestant segment of the rulemaking for OTC cough-cold drug products. These decongestant ingredients will be discussed within the

context of the rulemaking for OTC nasal decongestant drug products in a future issue of the **Federal Register**.

Both the Cough-Cold Panel and the Oral Cavity Panel reviewed data on the safety and effectiveness of ingredients used as expectorants in OTC drug products. The Cough-Cold Panel reviewed 20 expectorants, classifying 6 in Category II and 14 in Category III. The Oral Cavity Panel reviewed only four expectorants, classifying one in Category II and three in Category III. The Cough-Cold Panel reviewed three of the four ingredients that were reviewed later by the Oral Cavity Panel. Both panels classified these three ingredients in the same categories. Because most of the expectorants had been reviewed earlier and more extensively by the Cough-Cold Panel, the agency agrees with the comment that the data on the effectiveness of expectorant active ingredients should be incorporated into the expectorant segment of the rulemaking for OTC cough-cold drug products. These ingredients will be discussed in the final monograph for OTC expectorant drug products, to be published in a future issue of the **Federal Register**.

Therefore, for the above reasons, and because no data were submitted in support of the effectiveness of any decongestant or expectorant ingredient for oral health care use, the agency is not including decongestants and expectorants in this tentative final monograph.

Reference

- (1) OTC Volumes 130032 and 130058.

E. General Comments on Demulcent Drug Products

29. Citing the Panel's discussion of demulcents (47 FR 22915) as " * * * mucilaginous substances composed of gums, mucilages, starches, high molecular weight polymers of polyhydric alcohols, polysaccharides, certain saccharides * * *," one comment stated that sugars and sorbitol were overlooked by the Panel. The comment stated that two specific submissions to the Panel presented human clinical evidence supporting the demulcent action of sugar (Ref. 1) and sorbitol (Ref. 2), but that the Panel did not act on or respond to either of these submissions. The comment also referred to a study in which patients suffering with sore throat obtained pain relief with a plain, unflavored hard candy lozenge, a flavored hard candy lozenge, and a 2.4-mg hexylresorcinol lozenge (Ref. 3). The comment stated that in this study the demulcent effect of a sugar base lozenge was apparent both

immediately after the dissolution of the lozenge and 5 minutes later.

The comment urged FDA to include sugars (such as sucrose, glucose, fructose, and dextrins) and sorbitol as approved demulcents in the oral health care rulemaking. In addition, the comment requested that, because sugars and sorbitol are usually the major components by weight in oral health care lozenges and syrups and because they are produced for and recognized as food substances, they should be allowed to be controlled for quality in accordance with the Current Good Manufacturing Practice (CGMP) regulations for foods, rather than for drugs. The comment also suggested an alternative approach that would allow demulcent claims for sugars and sorbitol when these ingredients form the major solid content of an oral health care drug product, but would not require their listing as active ingredients.

The agency has reviewed the studies (Refs. 1, 2, and 3) cited by the comment in support of its recommendation to include sugars and sorbitol as Category I demulcents in this rulemaking. The agency concludes that these studies provide insufficient data to support the effectiveness of sugars or sorbitol as Category I demulcents in lozenges or syrups when used in OTC oral health care drug products.

In the studies claimed by the comment to contain clinical evidence supporting the demulcent activity of sugars and sorbitol, the antitussive effectiveness of sugars and sorbitol was tested by the citric acid aerosol challenge-cough induction technique (Refs. 1 and 2). The agency concludes that these induction studies do not clearly demonstrate the demulcent effectiveness of sugars or sorbitol because the subjects studied did not have a sore mouth and sore throat. The Panel recommended the following indication for oral health care demulcents: "Aids in the temporary relief of minor discomfort and protects irritated areas in sore mouth and sore throat." Therefore, studies conducted to demonstrate the demulcent effect of ingredients must be conducted in the correct target population, i.e., subjects with a sore mouth or sore throat. The reduction of citric acid aerosol induced-cough does not demonstrate that an ingredient relieves sore mouth and sore throat symptoms by a demulcent action.

The multiclinic study mentioned by the comment, involving 225 volunteers in 3 separate medication groups, was designed to evaluate the safety and effectiveness of hexylresorcinol in the treatment of pain due to simple sore throat (Ref. 3). This double-blind,

placebo-controlled study compared the effectiveness of a candy-based, 2.4-mg hexylresorcinol lozenge with two candy-based placebo lozenges, one flavored and one unflavored. The degree of relief from sore throat pain was subjectively evaluated immediately and 5 minutes after dissolution of each test lozenge. The agency's review of the results showed that there was some immediate subjective relief of sore throat pain in all groups tested and that the degree of relief was virtually the same in all three groups. At 5 minutes, the relief of sore throat pain provided by the hexylresorcinol lozenge was significantly better than the relief provided by the candy-based control lozenges ($p < 0.05$); nevertheless, the control lozenges provided some sore throat relief. This study does not demonstrate the effectiveness of sugar as a demulcent in lozenges because the ingredients used to formulate the candy-based lozenges are not identified or quantitated and because both unmedicated lozenges were candy-based. Therefore, the study was not adequately designed or controlled and does not demonstrate the effectiveness of sugar in the form of a lozenge as a demulcent (Ref. 3).

In its report, the Panel included dextrose, sugar, and sorbitol as inactive ingredients or pharmaceutical necessities (47 FR 22764). The agency notes that sugars and sorbitol are usually considered pharmaceutical necessities in the manufacture and formulation of oral health care drug products. Although the data reviewed by the agency are inadequate to demonstrate the effectiveness of sugars or sorbitol as oral health care demulcents, the agency agrees with the comment that sugars and sorbitol may have demulcent activity when used in lozenge or syrup form. Therefore, the agency is proposing in this tentative final monograph to classify sugars and sorbitol as Category III demulcents when present as the major component of oral health care formulations such as a syrup or lozenge.

With regard to the comment's suggestion that sugars and sorbitol in OTC oral health care drug products should be controlled for quality in accordance with the CGMP regulations for foods (21 CFR Part 110), the agency notes that when sugars and sorbitol are included in products intended for use as food, they are required to meet the requirements of the CGMP regulations for foods. However, when sugars and sorbitol are used in the formulation of drug products, they are "components" (21 CFR 210.3(b)(3)) of the finished drug

products and, as such, they must meet all appropriate CGMP requirements applicable to drug components (21 CFR Parts 210 and 217).

Therefore, the agency recognizes that sugars and sorbitol can be included as inactive pharmaceutical ingredients in oral health care drug products. However, as stated above, the agency is also proposing to classify sugars and sorbitol in Category III as demulcents if demulcent claims are attributed to their presence in oral health care formulations such as syrups and lozenges.

The agency notes, however, that terms such as "soothing" may be used to describe the action of a sugar-based syrup or lozenge. This term is not a demulcent claim but describes certain physical and chemical attributes of a drug product and is distinctly separate from labeling indications. Terms describing product characteristics (e.g., color, odor, flavor, and feel) appear in the labeling for the consumers' information. Because such claims are not directly related to the safe and effective use of OTC oral health care drug products, the agency considers these claims to be outside the scope of the monograph. Any term that is outside the scope of the monograph may appear in any portion of the labeling not required by the monograph, but such labeling may not detract from the required information. Therefore, an OTC oral health care drug product could be described in the following manner in that portion of the labeling not required by the monograph: "A * * * drug product formulated in a soothing sugar (or sorbitol) base."

References

- (1) OTC Volume 130095.
- (2) OTC Volume 130146.
- (3) Sabesin, S. M., and T. H. Weaver, Jr., "Multi-clinic SUCRETS Sore Throat Lozenge Study," draft of unpublished study, OTC Volume 130030.

F. General Comments on Combination Drug Products

30. Several comments objected to the Panel's recommendation in § 356.20(a), which allows an active ingredient identified in §§ 356.10 through 356.17 to be combined with one or more active ingredients from the same section in full or subtherapeutic doses only when "there is a clear demonstration that there is an improvement of safety or enhanced effectiveness or both." The comments contended that limited combinations to those that show enhanced safety or effectiveness conflicts with FDA's OTC drug review regulations in 21 CFR 330.10(a)(4)(iv) and with FDA's guidelines for OTC

combination drug products (Ref. 1), which require only that each ingredient contributes to the claimed effect of the combination product.

Two comments noted that the Topical Analgesic Panel classified the combination of benzocaine and phenol in Category I. (See the *Federal Register* of December 4, 1979; 44 FR 69865.) The comments maintained that this combination should be allowed for oral health care use because phenol has a slower onset of action than benzocaine, but a longer duration of action; and benzocaine has a rapid onset, but a shorter duration of action. The comments acknowledged that proof of effectiveness is necessary if one or both ingredients are present at subtherapeutic levels. However, further testing is unwarranted if both ingredients are present at therapeutic levels because the ingredients supplement each other and thus have a broader activity.

One comment added that useful and acceptable combinations, such as benzocaine and menthol for sore throat (both anesthetic/analgesic active ingredients, but with different mechanisms of action), would be jeopardized by the Panel's recommended restriction. The comment also stated that there should not be a restriction against combining menthol with phenol, benzyl alcohol, or salicyl alcohol because menthol contributes cooling and palatability to a formulation, thus increasing patient acceptance. According to the comment, separating the contributions of the two drugs in terms of hard proof of enhanced safety would be extremely difficult and is unnecessary for compliance with the FDA guidelines. The comment stated that it interprets the guidelines to include patient acceptance, flavor, and other product improvements as some of the advantages allowed for combination drugs by the FDA guidelines. The comments recommended that the agency not adopt the Panel's recommendation regarding enhanced safety or effectiveness (§ 356.20(a)), but instead follow § 330.10(a)(4)(iv) and FDA's combination guidelines (Ref. 1).

Unlike the agency's combination guidelines, the Panel's recommendations in § 356.20(a) for combinations of ingredients from the same therapeutic category do not differentiate between a combination of ingredients from the same therapeutic category with the same mechanism of action and a combination of ingredients from the same therapeutic category with different mechanisms of action. The combination policy in § 330.10(a)(4)(iv), supplemented by the guidelines for OTC

drug combination products (Ref. 1), will be used by the agency as the criterion for evaluating all OTC combination drug products.

The agency's guidelines do not require that combinations of ingredients from the same therapeutic category with different mechanisms of action demonstrate improved safety and/or enhanced effectiveness. Paragraph 2 of the guidelines provides that Category I active ingredients from the same therapeutic category that have different mechanisms of action may be combined to treat the same symptoms or condition if the combination meets the OTC combination policy in all respects and the combination is, on a benefit-risk basis, equal to or better than each of the active ingredients used alone at its therapeutic dose. Such combinations may utilize each active ingredient in full therapeutic or subtherapeutic dosage, as appropriate.

For combinations of ingredients from the same therapeutic category with the same mechanism of action, paragraph 3 of the guidelines states that such combinations should not ordinarily be combined unless there is some advantage over the single ingredients in terms of enhanced effectiveness, safety, patient acceptance, or quality of formulation. They may be combined in selected circumstances to treat the same symptoms or conditions if the combination meets the OTC combination policy in all respects, the combination offers some advantage over the active ingredients used alone, and the combination is, on a benefit-risk basis, equal to or better than each of the active ingredients used alone at its therapeutic dose.

For the above reasons, and based upon the requirements in § 330.10 and in the combination guidelines (Ref. 1), the agency is not proposing the Panel's Category I recommendation for the combinations in § 356.20(a). Instead, the agency is classifying all combinations containing two or more ingredients from the following pharmacologic groups in Category III except for specific combinations where data have shown a Category I classification is appropriate: anesthetic/analgesics identified in § 356.10, astringents identified in § 356.12, debriding agent/oral wound cleansers identified in § 356.14 (see comment 33 below), and demulcents identified in § 356.18. Decongestants identified in recommended § 356.15 and expectorants identified in recommended § 356.17 are not being included in this tentative final monograph but are being transferred to the rulemaking for OTC

cough-cold drug products. (See comment 28 above.)

The agency agrees with the comments that benzocaine and phenol, and benzocaine and menthol are allowable combinations of oral health care anesthetic/analgesic ingredients that conform to the requirements in § 330.10 and to the agency's combination guidelines (Ref. 1). Benzocaine and phenol or menthol are ingredients from the same therapeutic category but with different mechanisms of action. In its report, the Topical Analgesic Panel stated that "caine"-type drugs (e.g., benzocaine) and alcohol-type topical anesthetics (e.g., phenol and menthol) act at different receptor sites and that a combination of two may result in an effect that is greater than that produced if each ingredient were used alone (44 FR 69786). The Panel concluded that in combinations such as benzocaine and phenol or benzocaine and menthol, a contribution is made by each ingredient and that the attributes added to the combinations by the ingredients enhance the product's effectiveness and convey a noticeable benefit to the consumer (44 FR 69786). Despite a minority Panel report that disputed this reasoning (44 FR 69787 to 69790), the agency accepted the conclusions of the Panel majority and in the tentative final monograph for OTC external analgesic drug products, published in the *Federal Register* of February 8, 1983 (48 FR 5852), classified the combination of benzocaine with phenol or menthol in Category I. Because topical anesthetics behave similarly at different sites of the body (44 FR 69788), the agency believes that the combination of benzocaine with phenol or menthol should likewise enhance an oral cavity drug product's effectiveness, and that such combinations are at least as effective as each of the active ingredients used alone at its therapeutic dose.

The agency is aware that the mucous membranes are more permeable than the skin, and drugs are therefore more rapidly absorbed. Blood levels after application of local anesthetics to the mucous membranes simulate levels that would result from intravenous injection (Refs. 2, 3, and 4). Thus, the possibility of systemic effects occurring is greater from drugs used topically in the oral cavity than from those used on the intact skin. However, the agency believes that data submitted to the Oral Cavity Panel (Refs. 5 and 6) support the safety of the combination of benzocaine with phenol or menthol for use in the oral cavity. A combination drug product containing 6.67 percent benzocaine and 0.45 percent phenol was found to be

non-toxic and non-irritating (Ref. 5). Rats and mice tolerated large doses given orally and repeated applications on rabbit gingiva caused no gross or microscopic changes on the gingival surface or beneath it. Another combination drug product containing 6.25 mg benzocaine and 2.5 mg menthol per lozenge was demonstrated to be non-toxic to dogs after intragastric administration (Ref. 6). In human safety studies, the combination drug product produced no significant adverse effects in a total of 742 subjects (Ref. 6). Therefore, the agency believes that the combination of benzocaine with phenol or menthol meets the OTC drug combination policy in all respects and is, on a benefit-risk basis, equal to or better than each of the active ingredients used alone.

Because menthol, phenol, benzyl alcohol, and salicyl alcohol are ingredients from the same therapeutic category with the same mechanism of action, these ingredients should not normally be combined unless there is some advantage over the single ingredients in terms of enhanced effectiveness, safety, patient acceptance, or quality of formulation. The agency believes that because of its cooling effect, the use of menthol in combination with phenol, benzyl alcohol, or salicyl alcohol may enhance the consumer's acceptance of a drug product, but no data were submitted to the Panel or the agency demonstrating any advantage over the single ingredients for the combination of menthol with phenol, benzyl alcohol, or salicyl alcohol. The agency is, therefore, proposing a Category III classification for such combinations in this tentative final monograph. However, menthol, when used as an inactive ingredient, is generally recognized as safe as a flavorant in foods. (See 21 CFR 172.515 and 182.20.) Section 172.515 specifies that such flavoring substances be "used in the minimum quantity required to produce their intended effect and otherwise in accordance with all the principles of good manufacturing practice." These regulations do not specify an upper concentration for menthol used as a flavoring agent, and the agency is not proposing such a limit for OTC drug products at this time. However, the agency invites information and comments on (1) the minimum concentration of menthol needed to achieve a flavoring effect and (2) the minimum concentration needed to achieve a therapeutic effect. The agency will consider such information in determining how to distinguish between menthol as an active ingredient and

whether to establish minimum levels. In any case, if menthol is present at a therapeutic level in a product, the agency would consider it to be an active ingredient in that product.

In summary, the agency is proposing the following Category III combinations in this tentative final monograph: menthol and phenol, benzyl alcohol, or salicyl alcohol. The following Category I combinations are being proposed in § 356.20:

- (d) Benzocaine identified in § 356.10(b) may be combined with menthol identified in § 356.10(e).
- (e) Benzocaine identified in § 356.10(b) may be combined with phenol identified in § 356.10(f).

References

- (1) Food and Drug Administration, "General Guidelines for OTC Drug Combination Products," September 1978, Docket No. 78D-0322, Dockets Management Branch.
- (2) Adriani, J., and H. Dalili, "Penetration of Local Anesthetics Through Epithelial Barriers," *Anesthesia and Analgesia*, 50:834-840, 1971.
- (3) Adriani, J., "Some Aspects of Pharmacology of Local Anesthetics of Clinical Importance," *Marquette Medical Review*, 30:46-52, 1964.
- (4) Adriani, J., and D. Campbell, "Fatalities Following Topical Application of Local Anesthetics to Mucous Membranes," *Journal of the American Medical Association*, 162:1527-1530, 1956.
- (5) OTC Volume 130082.
- (6) OTC Volume 130020.

31. One comment agreed with the Panel's recommendations in § 356.20 (d), (g), and (j) that combinations of nasal decongestants with anesthetics/analgesics and with antimicrobials are rational. It did not agree with the Panel's Category II classification of the combination of expectorants with anesthetics/analgesics and furthermore believed that the following combinations which were not reviewed by the Panel should be Category I:

- (1) Decongestants with demulcents;
- (2) Expectorants with demulcents;
- (3) Antihistamines with each of the pharmacological groups reviewed by the Panel; and
- (4) Antitussives with each of the pharmacological groups reviewed by the Panel.

The Oral Cavity Panel considered only those combination drug products for which data were submitted pursuant to the notice published in the *Federal Register* on July 20, 1973 (39 FR 19444). The Panel recognized that other combination drug products may exist in the marketplace, but it lacked sufficient data concerning them to make a reasonable judgment of their safety and

effectiveness (47 FR 22791). Thus the Panel did not specifically address combination drug products containing a decongestant and a demulcent, an expectorant and a demulcent, or an antihistamine or an antitussive and any of the pharmacological groups reviewed by the Panel.

The agency recognizes that cold symptoms (e.g., nasal congestion, cough, and runny nose) and sore throat frequently occur concurrently and, for that reason, combinations of cough/cold active ingredients with oral health care active ingredients such as anesthetics/analgesics, antimicrobials, and demulcents may be rational. However, because such combination drug products are primarily cough-cold products, they are not being addressed in this document but will be discussed further in the tentative monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products. The agency believes that labeling specific to cough-cold/oral health care combination drug products need only appear in one monograph, which should be the one most pertinent to the intended target population of the combination product. Therefore, the agency has determined that the labeling for cough-cold/oral health care combination products should be included in the combinations segment of the cough-cold tentative final monograph. Accordingly, the Panel's specific recommendations in § 356.20 (d), (g), and (j) of its monograph are not being addressed in this tentative final monograph. Further, the agency has stated in § 356.78(b)(1) that for oral health care/cough-cold combinations, the indications stated in the cough-cold monograph should be used.

32. Two comments requested that the Panel's recommended combinations of active ingredients identified in § 356.20 be expanded to include the following combinations in appropriate dosage forms: (1) Any anesthetic/analgesic active ingredient identified in § 356.10 may be combined with any internal analgesic active ingredient identified in § 343.10 and (2) any anesthetic/analgesic active ingredient identified in § 356.10 may be combined with any demulcent active ingredient identified in § 356.16 and with any internal analgesic active ingredient identified in § 343.10.

The comments stated that these are rational combinations because there are several different mechanisms of action that provide relief of sore throat pain. The comments explained that topical anesthetic/analgesic ingredients and demulcent ingredients would provide prompt pain relief, and internal

analgesic ingredients would prolong the relief of pain for several hours.

The agency believes that the combinations listed above may be rational. However, the agency is not aware of any currently marketed OTC drug product that contain these combinations, and the comments provided no data to demonstrate the safety and effectiveness of any such combination. In this tentative final monograph, the agency is therefore proposing to classify the following combinations in Category III: (1) any anesthetic/analgesic combined with any internal analgesic and (2) any anesthetic/analgesic combined with any demulcent and any internal analgesic. The agency invites public comment on these combinations.

33. One comment noted that under § 356.20(a) of the Oral Cavity Panel's recommended monograph two debriding agents could be considered a Category I combination. The comment further noted, however, that the combination of two oral wound cleansers (which are the same ingredients and are used for the same purposes as debriding agents) is a Category II combination in the advance notice of proposed rulemaking for OTC oral mucosal injury drug products (44 FR 63276).

The comment supported a Category I classification for the combination of two active ingredients from the same therapeutic drug category when each active ingredient makes a contribution to the claimed effect, the safety or effectiveness of any active ingredient is not decreased, and the combination has some advantage over the single active ingredient. The comment requested that the monograph for oral mucosal injury drug products be corrected to allow the combination of two oral wound cleansers.

The agency is not proposing all of the Panel's recommended combinations in § 356.20(a) as Category I combinations. (See comment 30 above.) Rather, based upon the agency's general guidelines for OTC drug combination products (Ref. 1) and as stated in § 330.10, the agency is proposing Category III classification for combinations containing two or more ingredients from the same pharmacotherapeutic group with the same mechanism of action unless data show that the combination offers some advantage over the active ingredients used alone, and that the combination is, on a benefit-risk basis, equal to or better than each of the active ingredients used alone at its therapeutic dose. Also, as noted in comment 19 above, the agency is combining that part of the rulemaking for OTC oral mucosal injury drug

products that includes oral wound cleansers with the rulemaking for OTC oral health care drug products and is creating a new class of drugs called debriding agent/oral wound cleanser drug products. The agency concludes that there is no basis for classifying the combination of two or more debriding agent/oral wound cleanser ingredients in Category I and is proposing to classify that combination in Category III in this tentative final monograph to allow for further comments and the submission of data to support such a combination.

Therefore, if the data are submitted that justify the combination of two or more debriding agent/oral wound cleansers, that combination will be reclassified from Category III to Category I in the final monograph.

Reference

(1) Food and Drug Administration, "General Guidelines for OTC Drug Combination Products," September 1978, Docket No. 78D-0322, Dockets Management Branch.

34. One comment recommended that FDA reinstate the acceptability of a combination of debriding agents and demulcent agents, which was recognized in the Panel's drafts on combinations. As an example, the comment noted that in one product submitted to the Panel a demulcent recognized by the Panel (glycerin) is also the vehicle providing a stable dosage form of a debriding agent (carbamide peroxide).

The Panel's published report, rather than its working drafts, represents its final conclusions and recommendations to FDA. The combination of a debriding agent with a demulcent was not specifically discussed in the Panel's report, nor did the Panel classify as Category I any combination containing a debriding agent. In fact, the Panel classified several combinations containing debriding agents in Category II. It concluded that a debriding agent, because of its mechanical cleansing action, would wash away or dilute the other active ingredients in the combination and thus prevent them from acting as intended or from exerting their therapeutic effects (47 FR 22792.) The agency agrees with the Panel.

Regarding the comment's specific example, carbamide peroxide in anhydrous glycerin, the agency concludes that anhydrous glycerin is a pharmaceutical necessity used for the sole purpose of stabilizing the carbamide peroxide and as such is not considered to be an active ingredient in this product. Such products would contain only one active ingredient

(carbamide peroxide) and would not be considered a combination of a debriding agent and a demulcent.

For the reasons above, the agency is proposing that combinations of debriding agent/oral wound cleansers and demulcents be classified Category II.

II. The Agency's Tentative Adoption of the Panel's Report

A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions

1. *Summary of ingredient categories.* The agency has reviewed all claimed active ingredients submitted to the Oral Cavity Panel and oral wound cleanser ingredients submitted to the Dental Panel as well as other data and information available at this time, and has made the following changes in the categorization of oral health care (anesthetic/analgesic, astringent, debriding agent/oral wound cleanser, decongestant, demulcent, and expectorant) active ingredients recommended by the Panels. The agency is combining debriding agents reviewed by the Oral Cavity Panel and oral wound cleansers reviewed by the Dental Panel into one therapeutic group, debriding agent/oral wound cleansers. The agency is proposing to reclassify sodium perborate monohydrate, 1.2 g, used as a debriding agent/oral wound cleanser, from Category II to Category I. The agency is proposing to reclassify aspirin in a chewing gum base, used as a topical anesthetic/analgesic, from Category I to Category III for effectiveness. Aspirin in a chewing gum base remains in Category I for safety when used as a topical anesthetic/analgesic. In addition, the agency is not including decongestant or expectorant ingredients in this rulemaking but is transferring them to the rulemaking for OTC cough-cold drug products. As a convenience to the reader, the following list is included as a summary of the categorization of oral health care (anesthetic/analgesic, astringent, debriding agent/oral wound cleanser, decongestant, demulcent, and expectorant) active ingredients proposed by the Panel and the agency.

Oral health care active ingredients	Panel	FDA
Oral health care anesthetic/analgesics:		
Antipyrine.....	II	II
Aspirin.....	I	III
Benzocaine.....	I	I
Benzyl alcohol.....	I	I
Camphor.....	II	II

Oral health care active ingredients	Panel	FDA
Cresol.....	II	II
Dibucaine.....	II	II
Dibucaine hydrochloride.....	II	II
Dyclonine hydrochloride.....	I	I
Eucalyptol (eucalyptus oil).....	III	III
Hexylresorcinol.....	I	I
Lidocaine.....	II	II
Lidocaine hydrochloride.....	II	II
Menthol.....	I	I
Methyl salicylate.....	III	III
Phenol preparations (phenol and/or phenolate sodium).....	I	I
Pyrimamine maleate.....	II	II
Salicyl alcohol.....	I	I
Tetracaine.....	II	II
Tetracaine hydrochloride.....	II	II
Thymol.....	III	III
Oral health care astringents:		
Alum.....	I	I
Myrrh Tincture.....	II	II
Zinc chloride.....	I	I
Oral health care debriding agent/oral wound cleanser:		
Carbamide peroxide in anhydrous glycerin.....	I	I
Hydrogen peroxide.....	I	I
Sodium bicarbonate.....	I	I
Sodium perborate monohydrate.....	II	I
Oral health care decongestants:		
Phenylephrine hydrochloride.....	III	R ¹
Phenylpropanolamine hydrochloride.....	III	R ¹
Oral health care demulcents:		
Elm bark.....	I	I
Gelatin.....	I	I
Glycerin.....	I	I
Pectin.....	I	I
Sugars (sucrose, dextrose, fructose, and dextrins).....	(2)	III
Sorbitol.....	(2)	III
Oral health care expectorants:		
Ammonium chloride.....	III	R ¹
Horehound.....	III	R ¹
Potassium iodide.....	II	R ¹
Tolu balsam.....	III	R ¹

¹ R—Referred to the rulemaking for OTC cough-cold drug products.

² Not reviewed.

2. *Testing of Category II and Category III conditions.* The Oral Cavity Panel recommended testing guidelines for OTC oral health care drug products (47 FR 22781 to 22784) and testing guidelines for OTC oral health care anesthetic/analgesic drug products (47 FR 22830 to 22831). The Dental Panel recommended testing guidelines for OTC oral mucosal injury drug products (44 FR 63287 to

63289). The agency is offering these guidelines as the Panel's recommendations without adopting them or making any formal comment on them. Interested persons may communicate with the agency about the submissions of data and information to demonstrate the safety or effectiveness of any OTC oral health care anesthetic/analgesic, astringent, debriding agent/oral wound cleanser, or demulcent active ingredient or condition included in the review by following the procedures outlined in the agency's policy statement published in the *Federal Register* of September 29, 1981 (46 FR 47740). This policy statement includes procedures for the submissions and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

B. Summary of the Agency's Changes

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report and recommended monograph with the changes described in FDA's responses to the comments above and with other changes described in the summary below. A summary of the changes made by the agency follows.

1. Because of the overlap and similarities in the definitions, therapeutic use, mechanisms of action, and site of action of oral wound cleansers and debriding agents, the agency has decided to incorporate portions of the rulemaking for OTC oral mucosal injury drug products into this tentative final monograph for OTC oral health care drug products. The agency is combining the definition of oral wound cleansers proposed in § 353.3 of the tentative final monograph for OTC oral mucosal injury drug products and the definition of a debriding agent recommended by the Oral Cavity Panel in § 356.3(e) and is proposing the combined definition for debriding agent/oral wound cleansers in § 356.3 of this tentative final monograph. The agency is also reproposing, with minor modification, the indications, warnings, and directions from § 353.50 and the professional labeling from § 353.80 of the tentative final monograph for OTC oral mucosal injury drug products in § 356.70 and § 356.80 respectively of this tentative final monograph. (See comments 19 and 25 above.)

The agency is deferring consideration of recommended § 353.20(b), regarding the combination of an oral wound cleanser and an antiseptic, to the

antimicrobial segment of the rulemaking for OTC oral health care drug products.

The agency addressed oral wound healing agents in a final rule published in the *Federal Register* of July 18, 1986 (51 FR 26112). (See comment 19 above.)

2. The agency is transferring decongestant and expectorant ingredients to the rulemaking for OTC cough-cold drug products. Therefore, the agency is not including §§ 356.3(f) and (h), 356.15, 356.17, 356.20(d), (g), and (j), 356.55, and 356.57 of the advance notice of proposed rulemaking in this tentative final monograph. The agency will discuss decongestants within the context of the rulemaking for OTC nasal decongestant drug products that will be published in a future issue of the *Federal Register*. The agency will discuss expectorants in the final monograph for OTC expectorant drug products that will be published in a future issue of the *Federal Register*. (See comments 28 and 31 above.)

3. In this tentative final monograph, the agency is deleting the words "health care" from the statements of identity in §§ 356.55(a), 356.65(a), 356.70(a), and 356.75(a). The agency believes that the word "oral" is the key word in the statements of identity for oral health care drug products and that the words "health care" are excessive and unnecessary.

4. The agency is classifying aspirin (in a chewing gum base) in Category III for effectiveness and in Category I for safety. Therefore, the agency is not including the Panel's recommended §§ 356.10(a) and 356.50(a)(1), (c)(2), and (d)(1) in this tentative final monograph. (See comment 15 above.)

5. The agency agrees with the Oral Cavity Panel's recommendation that systemic relief of minor sore throat pain should be addressed in the rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products and is transferring all comments and associated submissions regarding internal analgesic ingredients for the relief of minor sore throat pain to that rulemaking (Docket No. 77N-0094) for further evaluation. (See comment 14 above.)

6. The agency is revising the descriptions of carbamide peroxide in the Panel's recommended §§ 356.14(a) and 356.54(d)(1) and is proposing, in this tentative final monograph, that § 356.16(a) read as follows, "Carbamide peroxide in anhydrous glycerin." Reference to a solution of carbamide peroxide in water is not being included in the directions proposed in § 356.70(d)(1). (See comment 24 above.)

7. Phenol identified in recommended § 356.10(g) and phenolate sodium

identified in recommended § 356.10(h) are being replaced by "Phenol preparations (phenol and/or phenolate)" in proposed § 356.10(f) of this tentative final monograph. (See comment 9 above.)

8. The agency is reclassifying sodium perborate monohydrate from Category II to Category I based upon the agency's evaluation of sodium perborate monohydrate as an oral wound cleanser and is including sodium perborate monohydrate, 1.2 g to be dissolved in 30 mL water in § 356.16(d) as a debriding agent/oral wound cleanser. The agency is including directions for use of sodium perborate monohydrate as a debriding agent/oral wound cleanser in § 356.70(d)(4) of this tentative final monograph. (See comment 22 above.)

9. The agency is classifying concentrations of less than 2 mg menthol in a solid dosage form for use as an anesthetic/analgesic active ingredient in Category III. (See comment 12 above.)

10. The agency is classifying sugars and sorbitol in solid and nonsolid dosage forms for use as a demulcent in Category III. (See comment 29 above.)

11. The agency is inviting the submission of data in support of a minimum dosage of 5 mg benzyl alcohol per solid dosage form. (See comment 13 above.)

12. The agency is not accepting the Panel's Category I recommendation for the combinations it included in § 356.20(a) and is instead proposing a Category III classification for those combinations that contain two or more ingredients from the same pharmacological group except in specific cases where data have shown a Category I classification is appropriate. As a result, the agency is classifying combinations containing two or more ingredients from the following pharmacological groups in Category III: anesthetic/analgesics in § 356.10, astringents in § 356.14, debriding agent/oral wound cleansers in § 356.16, and demulcents in § 356.18. (See comments 30 and 33 above.)

13. The agency is proposing to classify the following combinations in Category I: benzocaine and phenol or menthol. (See comment 30 above.)

14. In this tentative final monograph, the agency is classifying the following combinations in Category III: menthol and benzyl alcohol, phenol, or salicyl alcohol; an anesthetic/analgesic and an internal analgesic; and an anesthetic/analgesic, an internal analgesic, and a demulcent. (See comments 30 and 32 above.)

15. The agency is proposing a Category II classification for the

combination of a debriding agent/oral wound cleanser and demulcent. (See comment 34 above.)

16. Because combinations of cough-cold active ingredients with oral health care active ingredients are primarily cough-cold products, they are not being discussed in this document but will be addressed in the tentative final monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products to be published in a future issue of the *Federal Register*. Therefore, § 356.20 (d), (g), and (j) of the Panel's recommended monograph are not being proposed in this tentative final monograph. The agency is instead proposing § 356.20(g) which refers to § 341.40 for oral health care and cough-cold combinations and to § 356.78(b)(1) which states that for oral health care/cough-cold combinations, the indications stated in the cough-cold monograph should be used. (See comment 31 above.)

17. To encompass the variety of different solid dosage forms (lozenges, compressed tablets) and nonsolid dosage forms (mouthwashes, gels) that may be used as OTC oral health care drug products, the agency is using the terms "solid dosage forms" and "dosage forms other than solid," and is not using specific dosage form terms such as rinse, mouthwash, lozenge, etc., in §§ 356.55(d), 356.65(d), 356.70(d), and 356.75(d) of the tentative final monograph except where the identification of a specific dosage form is relevant to the use, safety, or effectiveness of the ingredient. (See comment 11 above.)

18. The warning recommended by the Panel in §§ 356.50(c)(3), 356.52(c)(2), 356.54(c)(2), and 356.56(c)(2) is not being included in this tentative final monograph. Instead, the agency is proposing the phrase "and then spit out" in appropriate places in the directions in §§ 356.55(d), 356.65(d), 356.70(d), and 356.75(d) of this tentative final monograph. (See comment 3 above.)

19. The agency is proposing that the lower age limit for use of all OTC oral health care drug products included in this tentative final monograph by 2 years, except for sodium perborate monohydrate and except for phenol preparations that are intended for ingestion or that could be inadvertently ingested. (See comment 22 above and Change No. 22 below.) In addition, in order to be consistent with labeling proposed for debriding agent/oral wound cleansers, the agency is deleting any reference to age limits from the warnings proposed for the OTC oral health care products included in this

tentative final monograph and is, instead, including age requirements in the directions for use in §§ 356.55(d), 356.65(d), 356.70(d), and 356.75(d). (See comment 26 above.)

20. The agency believes that children under 12 years of age should be supervised in the use of OTC oral health care nonsolid dosage forms. This restriction was recommended by the Dental Panel in the advance notice of proposed rulemaking for OTC oral mucosal injury drug products (44 FR 63278), and the agency agrees with that Panel. Therefore, in this tentative final monograph for oral health care drug products, the agency is proposing the phrase "Children under 12 years of age should be supervised in the use of the product" in all directions for use of dosage forms other than solid.

21. The agency believes the oral health care drug products in a dosage form other than solid should be gargled, swished around the mouth (affected area), or allowed to stay in place for at least 1 minute in order to exert their effect in the oral cavity, except for phenol which has been shown to exert its effect on the oral cavity in 15 seconds. (See Change No. 22 below.) Therefore, the agency is proposing such wording in the directions in §§ 356.55(d), 356.65(d), 356.70(d), and 356.75(d). The word "gargle" is not included in § 356.70(d) because debriding agent/oral wound cleansers are not indicated for the relief of sore throat symptoms. (See comment 26 above.)

22. The warnings recommended by the Panel in §§ 56.50(c)(1) (i) and (ii), 356.52(c)(1) (i) and (ii), and 356.56(c)(1) (i) and (ii) are not being included in this tentative final monograph. In order to limit the number of warnings and to simplify labeling so that only essential information is required, the agency is proposing to combine those warnings. Additionally, because OTC oral health care drug products other than debriding agent/oral wound cleansers may be used to relieve conditions associated with either sore throat or sore mouth, the agency believes that, in addition to the 2-day warning statement associated with sore throat symptoms, another statement would be useful to reflect the less serious nature of sore mouth symptoms. (For discussion of sore mouth symptoms, see comment 26 above.) Therefore, the agency is proposing the following revised warning in §§ 356.55(c)(1), 356.65(c), and 356.75(c) of this tentative final monograph: "If sore throat is severe, persists for more than 2 days, is accompanied or followed by fever, headache, rash, nausea, or vomiting, consult a doctor promptly. If

sore mouth symptoms do not improve in 7 days, see your dentist or doctor promptly." The agency is proposing in § 356.55(c)(2) a slightly different warning for anesthetic/analgesic drug products labeled only "for temporary relief of pain associated with canker sores." [The section numbers recommended by the Panel have been redesignated in this tentative final monograph.]

23. In this tentative final monograph the agency is including the following indication for OTC oral anesthetic/analgesic active ingredients in § 356.50(b): "For temporary relief of pain associated with canker sores." (See comment 6 above.)

24. Instead of the Panel's recommended directions for use of phenol and phenolate sodium in § 356.50(d) (7) and (8), the agency is revising those directions and including them in proposed § 356.55(d)(6) of this tentative final monograph. The agency believes that although phenol-containing oral health care drug products for local application (such as a spray or locally applied gel) may be used in children 2 years of age and older, phenol-containing oral health care products that are intended for ingestion (solid dosage forms) or that could be inadvertently ingested (mouthwashes) should not be used in children under 6 years of age except under the supervision of a dentist or doctor.

Although the amount of drug products used for local application in the oral cavity is small (usually less than 1 mL), the amount of product used as a mouthwash or oral rinse may be 10 to 25 mL. Children have been reported to be more sensitive to phenol toxicity than adults (Ref. 1), and children are more likely to swallow a liquid drug product (44 FR 63278). The Dental Panel stated that, for children under 6 years of age, there was no recommended dosage for phenol for use as a dental rinse except under the supervision of a dentist or doctor (47 FR 22759). In addition, the labeling of currently marketed OTC oral health care drug products containing phenol restricts use of the product to adults and children over 6 years of age (Ref. 2).

Therefore, the agency is proposing to restrict the use of phenol-containing lozenges (solid dosage form) and the use of nonsolid dosage forms (such as oral rinses or mouthwashes) to children 6 years of age and older. However, phenol-containing nonsolid dosage forms intended for local application (such as sprays or locally applied gels) may be used by children 2 years of age and older. Moreover, the agency is proposing to restrict the amount of

phenol-containing oral rinse or mouthwash that children 6 to 12 years of age may use to 10 mL per application so that the maximum pediatric dosage of 300 mg per day is not exceeded. The agency does not believe that it is necessary to restrict the amount of liquid dosage form used by adults. (See comment 10 above.)

Furthermore, the agency believes that the anesthetic effectiveness of phenol depends not only upon the dosing frequency but also upon the contact time per dose. Therefore, the agency is proposing at least a 15-second contact time for each application of a phenol-containing dosage form other than solid (Refs. 2 and 3). (For additional discussion of rinse times, see comment 10 above.) The agency is proposing the following directions for OTC oral health care anesthetic/analgesic drug products containing phenol and/or phenolate sodium in § 356.55(d)(6) of this tentative final monograph:

(i) *For dosage forms other than solid, the product is an aqueous solution or suspension containing phenol or phenolate sodium equivalent to 0.5- to 1.5-percent phenol—(a) For direct application.* Adults and children 2 years of age and older: Apply to the affected area, allow to remain in place for at least 15 seconds and then spit out. Use every 2 hours or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

(b) *For use as a mouthwash (oral rinse).* Adults and children 12 years of age and older: Gargle or swish around the mouth for at least 15 seconds and then spit out. Use every 2 hours or as directed by a dentist or doctor. Children 6 to under 12 years of age: Apply 10 milliliters to the affected area, gargle or swish around the mouth for at least 15 seconds and then spit out. Use every 2 hours or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 6 years of age: Consult a dentist or doctor.

(ii) *For solid dosage forms, the product (lozenge or tablet) contains phenol or phenolate sodium equivalent to 10 to 50 milligrams phenol.* Adults and children 12 years of age and older: Allow the product (lozenge or tablet) to dissolve slowly in the mouth. May be repeated every 2 hours or as directed by a dentist or doctor. Children 6 to under 12 years of age: Allow product lozenge or tablet to dissolve slowly in the mouth. May be repeated every 2 hours, not to exceed 300 milligrams phenol in 24 hours, or as directed by a dentist or doctor. Children under 6 years of age: Consult a dentist or doctor.

References

- (1) Solis-Cohen, S., and T. S. Githens, "Pharmacotherapeutics," in "Materia Medica and Drug Action," D. Appleton and Co. New York, p. 750, 1928.
- (2) OTC Volume 13 ATFM.

(3) Bronsky, D. A., "To Evaluate the Efficacy of Both Chloraseptic Solution and Chloraseptic Lozenges When Used to Relieve the Gingival and Buccal Mucosal Discomfort Associated with Orthodontic Braces," draft of unpublished study, C00014, Docket No. 80N-0033, Dockets Management Branch.

25. Because debriding agent/oral wound cleansers have not historically been indicated for use in the relief of sore throat symptoms, and because the therapeutic benefits of using these ingredients for sore throat symptoms are not apparent, the agency is proposing that debriding agent/oral wound cleansers be limited to use only in relieving symptoms associated with sore mouth. (See comment 26 above.) The agency is proposing the following indications for debriding agent/oral wound cleansers in § 356.70(b) of this tentative final monograph:

(1) "Aids in the removal of phlegm, mucus, or other secretions associated with occasional sore mouth."

(2) "For temporary use in cleansing minor wounds or minor gum inflammation resulting from minor dental procedures, dentures, orthodontic appliances, accidental injury, or other irritations of the mouth and gums."

(3) "For temporary use to cleanse canker sores."

26. The agency is proposing that debriding agent/oral wound cleansers can be safely used for up to 7 days before seeking professional guidance because debriding agent/oral wound cleansers are indicated only for removal of foreign material associated with sore mouth, and sore mouth symptoms are unlikely to be indicative of serious health threats. In addition, the agency is proposing that the lower age limit for use of debriding agent/oral wound cleansers, except sodium perborate monohydrate (see comment 22 above), be 2 years of age, and that because the age limitations are included in the directions, they need not be included in a warning statement.

Because debriding agent/oral wound cleansers are not indicated for sore throat symptoms, the agency is not including in this tentative final monograph the warning statement recommended by the Panel in § 356.54(c)(1)(i). Instead, the agency is combining the warning recommended in § 353.50(c) of the tentative final monograph for OTC oral mucosal injury drug products with the Panel's recommended warning in § 356.54(c)(1)(ii), to read as follows: "Do not use this product for more than 7 days unless directed by a dentist or doctor. If sore mouth symptoms do not improve in 7 days; if irritation, pain, or redness persists or worsens; or if

swelling, rash, or fever develops, see your dentist or doctor promptly" and is including this warning in § 356.70(c) of this tentative final monograph. (See comment 26 above.)

27. The agency is not accepting the directions for use for carbamide peroxide and hydrogen peroxide recommended by the Panel in § 356.54(d) (1) and (2). Instead, the directions recommended by the agency for carbamide peroxide and hydrogen peroxide as oral wound cleansers in § 353.50(d) (1) and (2) of the tentative final monograph for OTC oral mucosal injury drug products, with minor modifications, are being proposed in § 356.70(d) (1) and (2) of this tentative final monograph. (See comment 27 above.)

28. The agency is proposing the following additional indications for anesthetic/analgesic ingredients identified in § 356.10 in § 356.80 Professional labeling in this tentative final monograph: "For the temporary relief of pain associated with any one or more of the following conditions; tonsillitis, pharyngitis, throat infections, and stomatitis." (See comment 5 above.)

29. As a result of incorporating portions of the rulemaking for OTC oral mucosal injury drug products into this tentative final monograph, the agency is adding a section, § 356.70(b)(4), to the debriding agent/oral wound cleanser section of this tentative final monograph entitled "Other allowable statements" to include the following statements that were proposed in the tentative final monograph for OTC oral mucosal injury drug products: "Assists in the removal of foreign material from minor oral wounds" and "Physically removes debris from minor oral wounds."

30. Combining the oral health care rulemaking (proposed Part 356) and the oral mucosal injury rulemaking (proposed Part 353) into the present tentative final monograph under proposed 21 CFR Part 356 (entitled "Oral Health Care Drug Products for OTC Human Use") and deferring decongestant and expectorant active ingredients and cough-cold/oral health care combination drug products to other rulemakings has resulted in the redesignation of many section and paragraph numbers. The agency is also designating proposed Subpart D of the monograph as Subpart C and is placing the labeling sections under Subpart C.

31. In an effort to simplify OTC drug labeling, the agency proposed in a number of tentative final monographs to substitute the word "doctor" for "physician" in OTC drug monographs on the basis that the word "doctor" is more commonly used and better understood

by consumers. Based on comments received to these proposals, the agency has determined that final monographs and other applicable OTC drug regulations will give manufacturers the option of using either the word "physician" or the word "doctor." This tentative final monograph proposes that option.

The agency is proposing to remove the existing warning and caution statements required by § 369.20 for "sodium perborate (sodium perborate monohydrate) mouthwash and gargle and toothpaste" and for "throat preparations for temporary relief of minor sore throat: lozenges, troches, washes, gargles, etc." and the suggested warning for over-the-counter drugs for minor sore throats in § 201.315 because the conditions in those sections will be superseded by the requirements of the final monographs on OTC oral health care drug products (Part 356, Subpart C) and OTC relief of oral discomfort drug products (Part 354, Subpart C).

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the *Federal Register* of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC oral health care anesthetic/analgesic, astringent, debriding agent/oral wound cleanser, and demulcent drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law 96-354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC oral health care anesthetic/analgesic astringent, debriding agent/oral wound cleanser, and demulcent drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invited public comment in the advance notice of proposed rulemaking regarding any impact that this rulemaking would have on OTC oral health care anesthetic/analgesic, astringent, debriding agent, and demulcent drug products. It also invited public comment in the tentative final monograph for OTC oral mucosal injury drug products regarding any impact that this rulemaking would have on OTC oral mucosal injury drug products. No comments on economic impacts were received in response to either request. Any comments on the agency's initial determination of the economic consequences of this proposed rulemaking should be submitted by May 26, 1988. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Interested persons may, on or before May 26, 1988, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before May 26, 1988. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the *Federal Register*.

Interested persons, on or before January 27, 1989, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before March 27, 1989. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the *Federal Register* of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA-305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on March 27, 1989. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the *Federal Register*, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects

21 CFR Part 201

Drugs, Labeling.

21 CFR Part 356

Labeling, Over-the-counter drugs, Oral health care drug products.

21 CFR Part 369

OTC drugs, Warning and caution statements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR Part 201 is revised to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041-1042 as amended, 1050-1053 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

§ 201.315 [Removed]

2. Subpart G is amended by removing § 201.315 *Over-the-counter drugs for minor sore throats; suggested warning*.

3. By adding new Part 356, to read as follows:

PART 356—ORAL HEALTH CARE DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

Sec.

356.1 Scope.

356.3 Definitions.

Subpart B—Active Ingredients

356.10 Anesthetic/analgesics.

356.14 Astringents.

356.16 Debriding agent/oral wound cleansers.

356.18 Demulcents.

356.20 Permitted combinations of active ingredients.

Subpart C—Labeling

356.50 Labeling of oral health care drug products.

356.55 Labeling of anesthetic/analgesic drug products.

356.65 Labeling of astringent drug products.

356.70 Labeling of debriding agent/oral wound cleanser drug products.

356.75 Labeling of demulcent drug products.

356.78 Labeling of combination drug products.

356.80 Professional labeling.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041-1042 as amended, 1050-1053 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

Subpart A—General Provisions

§ 356.1 Scope.

(a) An over-the-counter oral health care drug product in a form suitable for topical administration is generally recognized as safe and effective and is not misbranded if it meets each condition in this part and each general condition established in § 330.1

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 356.3 Definitions.

As used in this part:

(a) *Oral health care drug*. A drug product applied topically for the proper care of the oral cavity, including the temporary relief of symptoms of the mouth and throat, for example, occasional minor sore throat or mouth soreness.

(b) *Anesthetic/analgesic*. A substance applied topically to an epithelial surface (e.g., skin or mucous membrane) that relieves pain without necessarily

abolishing other sensations (analgesic) or a substance applied topically that completely blocks pain receptors resulting in a sensation of numbness and abolition of response to painful stimuli (anesthetic).

(c) *Anhydrous glycerin*. An ingredient that may be prepared by heating glycerin U.S.P. at 150 °C for 2 hours to drive off the moisture content.

(d) *Astringent*. An agent that causes contraction of the tissues or arrest of secretions by coagulation of proteins on a cell surface.

(e) *Debriding agent/oral wound cleanser*. A nonirritating agent which causes or assists in the removal (physically or chemically) of foreign material or devitalized or contaminated tissue from or adjacent to a minor oral wound or a traumatic or infected lesion to expose surrounding healthy tissue and does not delay wound healing.

(f) *Demulcent*. A bland, inert agent that soothes and relieves irritation of inflamed or abraded surfaces such as mucous membranes.

(g) *Mouthwash (oral rinse)*. A solution used for rinsing the mouth, not necessarily for medicinal purposes.

(h) *Oral cavity (mouth)*. The cavity of the mouth and associated structures, including the cheeks, palate, oral mucosa, glands where ducts open into it, the teeth, and the tongue.

Subpart B—Active Ingredients

§ 356.10 Anesthetic/analgesics.

The active ingredient of the product consists of any of the following when used within the dosage limits and in the dosage form established for each ingredient in § 356.55(d).

- (a) Benzocaine.
- (b) Benzyl alcohol.
- (c) Dyclonine hydrochloride.
- (d) Hexylresorcinol.
- (e) Menthol.
- (f) Phenol preparations (phenol and/or phenolate sodium).
- (g) Salicyl alcohol.

§ 356.14 Astringents.

The active ingredient of the product consists of any of the following when used within the dosage limits and in the dosage form established for each ingredient in § 356.65(d).

- (a) Alum.
- (b) Zinc chloride.

§ 356.16 Debriding agent/oral wound cleansers.

The active ingredient of the product consists of any of the following when used within the dosage limits and in the dosage form established for each ingredient in § 356.70(d).

- (a) Carbamide peroxide in anhydrous glycerin.
- (b) Hydrogen peroxide.
- (c) Sodium bicarbonate.
- (d) Sodium perborate monohydrate.

§ 356.18 Demulcents.

The active ingredient of the product consists of any of the following when used within the dosage limits and in the dosage form established for each ingredient in § 356.75(d):

- (a) Elm bark.
- (b) Gelatin.
- (c) Glycerin.
- (d) Pectin.

§ 356.20 Permitted combinations of active ingredients.

(a) Any anesthetic/analgesic active ingredient identified in § 356.10 may be combined with any astringent active ingredient identified in § 356.14.

(b) Any anesthetic/analgesic active ingredient identified in § 356.10 may be combined with any demulcent active ingredient identified in § 356.18.

(c) Benzocaine identified in § 356.10(a) may be combined with menthol identified in § 356.10(e).

(d) Benzocaine identified in § 356.10(a) may be combined with phenol preparations identified in § 356.10(f).

(e) Oral health care and cough-cold combinations. See § 341.40.

Subpart C—Labeling

§ 356.50 Labeling of oral health care drug products.

(a) The word physician may be substituted for the word doctor in any of the labeling statements in this part.

(b) Where applicable, indications in this part applicable to each ingredient in the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable. Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this part, may also be used, as provided in § 330.1(c)(2), subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(c) Warnings and directions for use, respectively, applicable to each ingredient in the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

§ 356.55 Labeling of anesthetic/analgesic drug products.

(a) *Statement of identity*. The labeling of the product contains the established name of the drug, if any, and identifies the product as an "oral anesthetic," an "oral anesthetic/analgesic," or an "oral pain reliever."

(b) *Indications*. The labeling of the product states, under the heading "Indications," either or both of the following:

(1) "For temporary relief of occasional minor irritation, pain, sore mouth, and sore throat."

(2) "For temporary relief of pain associated with canker sores."

(c) *Warnings*. The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For all products containing any ingredient identified in § 356.10*. "If sore throat is severe, persists for more than 2 days, is accompanied or followed by fever, headache, rash, nausea, or vomiting, consult a doctor promptly. If sore mouth symptoms do not improve in 7 days, see your dentist or doctor promptly."

(2) *For all products containing any ingredient identified in § 356.10 labeled with only the indication in § 356.55(b)(2)*. "Do not use this product for more than 7 days unless directed by a dentist or doctor. If sore mouth symptoms do not improve in 7 days; if irritation, pain, or redness persists or worsens; or if swelling, rash or fever develops, see your dentist or doctor promptly."

(d) *Directions*. The labeling of the product contains the following information under the heading "Directions":

(1) *For products containing benzocaine identified in § 356.10(a)—(i) For dosage forms other than solid, the product is a 5- to 20-percent solution or suspension*. Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around in the mouth, or allow to remain in place at least 1 minute and then spit out. Use up to 4 times daily or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of the product. Children under 2 years of age: Consult a dentist or doctor.

(ii) *For solid dosage forms, the product contains 2 to 15 milligrams benzocaine*. Adults and children 2 years of age and older: Allow product to dissolve slowly in the mouth. May be repeated every 2 hours as needed or as directed by a dentist or doctor. Children under 2 years of age: Consult a dentist or doctor.

(2) *For products containing benzyl alcohol identified in § 356.10(b)—(i) For*

dosage forms other than solid, the product is a 0.05- to 10-percent solution or suspension. Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around, or allow to remain in place at least 1 minute and then spit out. Use up to 4 times daily or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of the product. Children under 2 years of age: Consult a dentist or doctor.

(ii) For solid dosage forms, the product contains 100 to 500 milligrams benzyl alcohol. Adults and children 2 years of age and older: Allow product to dissolve slowly in the mouth. May be repeated every 2 hours as needed or as directed by a dentist or doctor. Children under 2 years of age: Consult a dentist or doctor.

(3) For products containing dyclonine hydrochloride identified in § 356.10(c)—(i) For dosage forms other than solid, the product is a 0.05- to 0.10-percent solution or suspension. Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around, or allow to remain in place at least 1 minute and then spit out. Use up to 4 times daily or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

(ii) For solid dosage forms, the product contains 1 to 3 milligrams dyclonine hydrochloride. Adults and children 2 years of age and older: Allow product to dissolve slowly in the mouth. May be repeated every 2 hours as needed or as directed by a dentist or doctor. Children under 2 years of age: Consult a dentist or doctor.

(4) For products containing hexylresorcinol identified in § 356.10(d)—(i) For dosage forms other than solid, the product is a 0.05- to 0.1-percent solution or suspension. Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around, or allow to remain in place at least 1 minute and then spit out. Use up to 4 times daily or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of the product. Children under 2 years of age: Consult a dentist or doctor.

(ii) For solid dosage forms, the product contains 2 to 4 milligrams hexylresorcinol. Adults and children 2 years of age and older: Allow product to dissolve slowly in the mouth. May be repeated every 2 hours as needed or as directed by a dentist or doctor. Children under 2 years of age: Consult a dentist or doctor.

(5) For products containing menthol identified in § 356.10(e)—(i) For dosage

forms other than solid, the product is a 0.04- to 2-percent solution or suspension. Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around, or allow to remain in place at least 1 minute and then spit out. Use up to 4 times daily or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

(ii) For solid dosage forms, the product contains 2 to 20 milligrams menthol. Adults and children 2 years of age and older: Allow product to dissolve slowly in the mouth. May be repeated every 2 hours as needed or as directed by a dentist or doctor. Children under 2 years of age: Consult a dentist or doctor.

(6) For products containing phenol preparations identified in § 356.10(f)—(i) For dosage forms other than solid, the product is an aqueous solution or suspension containing phenol or phenolate sodium equivalent to 0.5- to 1.5-percent phenol—(A) For direct application. Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around, or allow to remain in place at least 15 seconds and then spit out. Use every 2 hours or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

(B) For use as a mouthwash (oral rinse). Adults and children 12 years of age and older: Apply to the affected area. Gargle, swish around the mouth for at least 15 seconds and then spit out. Use every 2 hours or as directed by a dentist or doctor. Children 6 to under 12 years of age: Apply 10 milliliters to the affected area, gargle, or swish around the mouth for at least 15 seconds and then spit out. Use every 2 hours or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 6 years of age: Consult a dentist or doctor.

(ii) For solid dosage forms, the product (lozenge or tablet) contains phenol or phenolate sodium equivalent to 10 to 50 milligrams phenol. Adults and children 12 years of age and older: Allow the product (lozenge or tablet) to dissolve slowly in the mouth. May be repeated every 2 hours or as directed by a dentist or doctor. Children 6 to under 12 years of age: Allow product (lozenge or tablet) to dissolve slowly in the mouth. May be repeated every 2 hours, not to exceed 300 milligrams phenol in 24 hours, or as directed by a dentist or doctor. Children under 6 years of age: Consult a dentist or doctor.

(7) For products containing salicyl alcohol identified in § 356.10(g)—(i) For dosage forms other than solid, the product is a 1- to 6-percent solution or suspension. Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around, or allow to remain in place at least 1 minute and then spit out. Use up to 4 times daily or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

(ii) For solid dosage forms, the product contains 50 to 100 milligrams salicyl alcohol. Adults and children 2 years of age and older: Allow product to dissolve slowly in the mouth. May be repeated every 2 hours as needed or as directed by a dentist or doctor. Children under 2 years of age: Consult a dentist or doctor.

§ 356.65 Labeling of astringent drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "oral astringent."

(b) *Indications.* The labeling of the product states, under the heading "Indications," the following: "For temporary relief of occasional minor irritation, pain, sore mouth, and sore throat."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) For all products containing any ingredient identified in § 356.14. "If sore throat is severe, persists for more than 2 days, is accompanied or followed by fever, headache, rash, nausea, or vomiting, consult a doctor promptly. If sore mouth symptoms do not improve in 7 days, see your dentist or doctor promptly."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) For products containing alum identified in § 356.14(a), the product is a 0.2- to 0.5-percent aqueous solution. Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around, or allow to remain in place at least 1 minute and then spit out. Use up to 4 times daily or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

(2) For products containing zinc chloride identified in § 356.14(b), the product is a 0.1- to 0.25-percent aqueous

solution. Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around, or allow to remain in place at least 1 minute and then spit out. Use up to 4 times daily or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

§ 356.70 Labeling of debriding agent/oral wound cleanser drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "oral debriding agent" or an "oral debriding agent/oral wound cleanser."

(b) *Indications.* The labeling of the product states, under the heading "Indications," either or all of the following:

(1) "Aids in the removal of phlegm, mucus, or other secretions associated with occasional sore mouth."

(2) "For temporary use in cleansing minor wounds or minor gum inflammation resulting from minor dental procedures, dentures, orthodontic appliances, accidental injury, or other irritations of the mouth and gums."

(3) "For temporary use to cleanse canker sores."

(4) *Other allowable statements.* In addition to the required information specified in paragraphs (a), (b), (c), and (d) of this section, the labeling of the product may contain any of the following statements, provided such statements are neither placed in direct conjunction with information required to appear in the labeling nor occupy labeling space with greater prominence or conspicuousness than the required information.

(i) "Assists in the removal of foreign material from minor oral wounds."

(ii) "Physically removes debris from minor oral wounds."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For all products containing any ingredient identified in § 356.16.* "Do not use this product for more than 7 days unless directed by a dentist or doctor. If sore mouth symptoms do not improve in 7 days; if irritation, pain, or redness persists or worsens; or if swelling, rash, or fever develops, see your dentist or doctor promptly."

(d) *Directions.* The labeling of the products contains the following information under the heading "Directions":

(1) *For products containing carbamide peroxide identified in § 356.16(a), the product is a 10- to 15-percent solution in*

anhydrous glycerin—(i) For direct application. Adults and children 2 years of age and older: Apply several drops directly to the affected area of the mouth. Allow the medication to remain in place at least 1 minute and then spit out. Use up to 4 times daily after meals and at bedtime or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

(ii) *For use as a mouthwash (oral rinse).* Adults and children 2 years of age and older: Place 10 to 20 drops onto tongue. Mix with saliva. Swish around in the mouth over the affected area for at least 1 minute and then spit out. Use up to 4 times daily after meals and at bedtime or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

(2) *For products containing hydrogen peroxide identified in § 356.16(b), the product is a 3-percent aqueous solution—(i) For direct application.*

Adults and children 2 years of age and older: Apply several drops to the affected area of the mouth. Allow the medication to remain in place at least 1 minute and then spit out. Use up to 4 times daily after meals and at bedtime or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

(ii) *For use as an oral rinse.* Adults and children 2 years of age and older: Mix with an equal amount of warm water. Swish around in the mouth over the affected area for at least 1 minute and then spit out. Use up to 4 times daily after meals and at bedtime or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of the product. Children under 2 years of age: Consult a dentist or doctor.

(3) *For products containing sodium bicarbonate identified in § 356.16(c).* Adults and children 2 years of age and older: Prepare a solution by mixing ½ to 1 teaspoon in ½ glass (4 ounces) of water. Swish around in mouth over affected area for at least 1 minute and then spit out. Use up to 4 times daily or as directed by a dentist or doctor. Children under 12 should be supervised in the use of the product. Children under 2 years of age: Consult a dentist or doctor.

(4) *For products containing sodium perborate monohydrate identified in § 356.16(d).* Adults and children 6 years of age and older: Dissolve 1.2 grams of sodium perborate monohydrate in 1

ounce (30 milliliters) of warm water. Use immediately. Swish solution around in the mouth over the affected area or gargle for at least 1 minute and then spit it out. Do not swallow. Use up to 4 times daily after meals and at bedtime or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Consult a dentist or doctor for use in children under 6 years of age.

§ 356.75 Labeling of demulcent drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "oral demulcent."

(b) *Indications.* The labeling of the product states, under the heading "Indications," the following: "For temporary relief of minor discomfort and protection of irritated areas in sore mouth and sore throat."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For all products containing any ingredient identified in § 356.18.* "If sore throat is severe, persists for more than 2 days, is accompanied or followed by fever, headache, rash, nausea, or vomiting, consult a doctor promptly. If sore mouth symptoms do not improve in 7 days, see your dentist or doctor promptly."

(2) *For products containing glycerin identified in § 356.18(c).* "Do not use full strength. Dilute with two or three volumes of water."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For products containing elm bark identified in § 356.18(a), the product is 10- to 15-percent elm bark in a solid dosage form.* Adult and children 2 years of age and older: Allow product to dissolve slowly in the mouth. May be repeated every 2 hours as needed or as directed by a dentist or doctor. Children under 2 years of age: Consult a dentist or doctor.

(2) *For products containing gelatin identified in § 356.18(b)—(i) For dosage forms other than solid, the product is a 5- to 10-percent solution or suspension containing a sufficient quantity of gelatin to form a semi-solid state.* Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around in the mouth, or allow to remain in place for at least 1 minute and then spit out. Use as needed or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of the product.

Children under 2 years of age: Consult a dentist or doctor.

(ii) *For solid dosage forms, the product contains a sufficient quantity of gelatin to form a solid state.* Adults and children 2 years of age and older: Allow product to dissolve slowly in the mouth. May be repeated as needed or as directed by a dentist or doctor. Children under 2 years of age: Consult a doctor.

(3) *For products containing glycerin identified in § 356.18(c).* Adults and children 2 years of age and older: Apply a solution containing glycerin diluted with 2 or 3 parts of water to the affected area. Gargle, swish around in the mouth, or allow to remain in place for at least 1 minute and then spit out. Use as needed or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

(4) *For products containing pectin identified in § 356.18(d)—(i) For dosage forms other than solid, the product is a solution or a gel containing a sufficient quantity of pectin to form a semi-solid state.* Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around in the mouth, or allow to remain in place for at least 1 minute and then spit out. Use as needed or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of the product. Children under 2 years of age: Consult a dentist or doctor.

(ii) *For solid dosage forms, the product contains a sufficient quantity of pectin to form a solid state.* Adults and children 2 years of age and older: Allow product to dissolve slowly in the mouth. May be repeated as needed or as directed by a dentist or doctor. Children under 2 years of age: Consult a dentist or doctor.

§ 356.78 Labeling of combination drug products.

Statements of identity, indications, warnings, and directions for use, respectively, applicable to each active ingredient in the combination drug product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

(a) *Statement of identity.* For a combination drug product that has an established name, the labeling of the product states the established name of

the combination drug product, followed by the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs. For a combination drug product that does not have an established name, the labeling of the product states the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs, unless otherwise stated below.

(b) *Indications.* The labeling of the product states, under the heading "Indications," the indication(s) for each ingredient in the combination, as established in the indications sections of the applicable OTC drug monographs, unless otherwise stated below. Other truthful and nonmisleading statements, describing only the indications for use that have been established in the applicable OTC drug monographs or listed below may also be used as provided in § 330.1(c)(2), subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act. In addition to the required information identified above in this section, the labeling of the combination drug product may contain any of the "other allowable statements" (if any) that are identified in the applicable monographs, provided such statements are neither placed in direct conjunction with information required to appear in the labeling nor occupy labeling space with greater prominence or conspicuousness than the required information.

(1) *For permitted combinations identified in § 356.20(e).* The indications in § 341.85 should be used. (To be published in a future issue of the **Federal Register**.)

(c) *Warnings.* The labeling of the product states, under the heading "Warnings," the warning(s) for each ingredient in the combination, as established in the warnings sections of the applicable OTC drug monographs, unless otherwise stated below.

(d) *Directions.* The labeling of the product states, under the heading "Directions," directions that conform to the directions established for each

ingredient in the directions sections of the applicable OTC drug monographs, unless otherwise stated below. When the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product may not exceed any maximum dosage limits established for the individual ingredients in the applicable OTC drug monograph.

§ 356.80 Professional labeling.

(a) The labeling of products containing oral anesthetic/analgesic active ingredients identified in § 356.10 provided to health professionals (but not to the general public) may contain the following indication: "For the temporary relief of pain associated with" (select one or more of the following conditions: "tonsillitis," "pharyngitis," "throat infections," or "stomatitis.")

(b) The labeling of products containing oral debriding agent/oral wound cleanser active ingredients identified in § 356.16 provided to health professionals (but not to the general public) may contain the following indication: "For temporary use in the cleansing of gum irritation due to erupting teeth (teething)."

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

4. The authority citation for 21 CFR Part 369 continues to read as follows:

Authority: Secs. 502, 503, 506, 507, 701, 52 Stat. 1050–1052 as amended, 55 Stat. 851, 59 Stat. 463 as amended, 52 Stat. 1055–1056 as amended (21 U.S.C. 352, 353, 356, 357, 371); 21 CFR 5.10 and 5.11.

§ 369.20 [Amended]

5. In subpart B, § 369.20 *Drugs; recommended warning and caution statements* is amended by removing the entries for "SODIUM PERBORATE MOUTHWASH AND GARGLE AND TOOTHPASTE" and "THROAT PREPARATIONS FOR TEMPORARY RELIEF OF MINOR SORE THROAT: LOZENGES, TROCHES, WASHES, GARGLES, ETC."

Dated: October 5, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-1455 Filed 1-26-88; 8:45 am]

BILLING CODE 4160-01-M

Federal Register

**Wednesday
January 27, 1988**

Part VI

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 28, 37 and 52

**Federal Acquisition Regulation (FAR);
Nonpersonal Services Contracts for
Health Care; Proposed Rule**

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 28, 37, and 52

Federal Acquisition Regulation (FAR);
Nonpersonal Services Contracts for
Health Care

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to the FAR to prescribe uniform procedures regarding nonpersonal services contracts for health care services. Among other things, the proposed revisions prescribe a contract clause requiring that health care providers (i.e., physicians, dentists, and other medical practitioners) maintain medical liability insurance as a contract requirement and indemnify the Government against liability producing acts or omissions by the contractor, its agents, and employees occurring during contract performance. Additionally, the clause clarifies the relationship of the parties, by providing that professional services rendered by the contractor are rendered in its capacity as an independent contractor.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before March 28, 1988 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 87-51 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:**A. Background**

In order to augment internal health care resources, the military departments and civilian agencies frequently enter into nonpersonal services contracts for the provision of medical services by physicians, dentists, and other practitioners. The majority of these contracts are awarded within DoD, for

the purpose of providing medical care to military personnel and their dependents.

Under a nonpersonal services contract, the health care provider is an independent contractor and is legally responsible for liability producing acts or omissions by the contractor, its agents and employees which arise during contract performance. In recognition of this relationship, departments and agencies have generally required proof of liability insurance, in order to ensure that a remedy is available to injured health care beneficiaries, together with appropriate indemnification provisions within the contract instrument. As these provisions have varied, the proposed rule would benefit both the public and contracting personnel by adopting a uniform procedure and contract clause for use Governmentwide, thereby simplifying contracting procedures.

The contract clause proposed in this rule has been adopted from one currently used by the U.S. Army Health Services Command, with minor revisions to reflect FAR conventions and terminology. Comments are especially invited from the medical liability insurance industry with respect to the technical terms and procedures contained within the clause.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.* The majority of nonpersonal services contracts currently awarded by the military departments and civilian agencies contain provisions requiring health care providers to maintain liability insurance and indemnify the Government for liability producing acts by the contractor arising during contract performance. In addition, most states have adopted statutory provisions with respect to liability insurance coverage by practitioners within their jurisdictions. The proposed rule is not expected to affect insurance rates which are based upon the medical specialty involved and locale of practice, as opposed to the class of beneficiary affected. An Initial Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small entities and other interested parties.

Comments are also invited from small entities, under section 610 of the Act, with respect to existing FAR coverage within FAR Part 37. Such comments must be submitted separately and cite FAR Case 88-610 in correspondence.

C. Paperwork Reduction Act

The proposed rule does not contain information collection requirements nor impose recordkeeping burdens within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.* Accordingly, OMB approval of the proposed rule is not required.

List of Subjects in 48 CFR Parts 28, 37, and 52

Government procurement.

Dated: January 14, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 28, 37, and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 28, 37, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 28—BONDS AND INSURANCE

2. Section 28.301 is amended by adding paragraph (c) to read as follows:

§ 28.301 Policy.

* * * * *

(c) Contractors awarded nonpersonal services contracts for health care services are required to maintain medical liability insurance and indemnify the Government for liability producing acts or omissions by the contractor, its employees and agents (see 37.400).

PART 37—SERVICE CONTRACTING

3. New Subpart 37.4, consisting of sections 37.400 through 37.403, is added to read as follows:

Subpart 37.4—Nonpersonal Health Care Services

Sec.	
37.400	Scope of subpart.
37.401	Policy.
37.402	Contracting officer responsibilities.
37.403	Contract clause.

Subpart 37.4—Nonpersonal Health Care Services**§ 37.400 Scope of subpart.**

This subpart prescribes policies and procedures for obtaining health care services of physicians, dentists, and other health care providers by nonpersonal services contracts, as defined in 37.101.

§ 37.401 Policy.

Agencies may enter into nonpersonal health care services contracts with physicians, dentists, and other health

care providers under authority of 10 U.S.C. 2304 and 41 U.S.C. 253. Each contract shall—

(a) State that the contract is a nonpersonal, health care services contract, as defined in 37.101, under which the contractor is an independent contractor;

(b) State that the Government may evaluate the quality of professional and administrative services provided, but retains no control over the medical, professional aspects of services rendered (e.g. professional judgments, diagnosis, or specific medical treatment);

(c) Require that the contractor indemnify the Government for any liability producing act or omission by the contractor, its employees and agents occurring during contract performance;

(d) Require that the contractor maintain medical liability insurance, in a coverage amount acceptable to the contracting officer, which is not less than the amount normally prevailing within the local community for the medical specialty concerned; and

(e) State that the contractor is required to ensure that its subcontracts for provision of health care services, contain the requirements of the clause at 52.237-7, Indemnification and Medical Liability Insurance, including the maintenance of medical liability insurance.

§ 37.402 Contracting officer responsibilities.

Contracting officers shall obtain evidence of insurability concerning medical liability insurance from the apparently successful offeror prior to contract award and shall obtain a certificate of insurance evidencing the required coverage prior to commencement of performance.

§ 37.403 Contract clause.

The contracting officer shall insert the clause at 52.237-7, Indemnification and Medical Liability Insurance, in solicitations and contracts for nonpersonal health care services, other than those conducted using small purchase procedures of Part 13.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.237-7 is added to read as follows:

§ 52.237-7 Indemnification and Medical Liability Insurance.

As prescribed in 37.403, insert the following clause:

Indemnification and Medical Liability Insurance (January 1988)

(a) It is expressly agreed and understood that this is a nonpersonal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional services rendered by the Contractor are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided, but retains no control over professional aspects of the services rendered, including by example the Contractor's professional medical judgment, diagnosis, or specific medical treatments. The Contractor shall be solely liable for and expressly agrees to indemnify the Government with respect to any liability producing acts or omissions by it or by its employee or agents. The Contractor shall maintain liability insurance in the amount of not less than [*] per incident during the term of this contract.

(b) An apparently successful offeror, upon request by the Contracting Officer, shall furnish prior to contract award evidence of its insurability concerning the medical liability insurance required by paragraph (a) of this clause.

(c) Liability insurance may be on either an occurrences basis or on a claims-made basis. If the policy is on a claims-made basis, an extended reporting endorsement (tail) for a

period of not less than 3 years after the end of the contract term must also be provided.

(d) A certificate of insurance evidencing the required coverage shall be provided to the Contracting Officer prior to the commencement of services under this contract. If the insurance is on a claim-made basis and evidence of an extended reporting endorsement is not provided prior to the commencement of services, evidence of such endorsement shall be provided to the Contracting Officer prior to the expiration of this contract. Final payment under this contract shall be withheld until evidence of the extended reporting endorsement is provided to the Contracting Officer.

(e) The policies evidencing required insurance shall also contain an endorsement to the effect that any cancellation or material change adversely affecting the Government's interests shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. If during the performance period of the contract the Contractor changes insurance providers, the Contractor must provide evidence that the Government will be indemnified to the limits specified in paragraph (a) of this clause, for the entire period of the contract, either under the new policy or a combination of old and new policies.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts under this contract for health care services and shall require such subcontractors to provide evidence of and maintain insurance in accordance with paragraph (a) of this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

(End of clause)

* Contracting Officer insert the dollar value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests.

[FR Doc. 88-1608 Filed 1-26-88; 8:45 am]

BILLING CODE 6820-61-M

THE HISTORY OF THE
CITY OF BOSTON
FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME
BY
JOSEPH NEALE
OF THE BOSTON BAR
IN TWO VOLUMES
VOL. II.
BOSTON: PUBLISHED BY
J. NEALE, AT THE
CITY OF BOSTON, 1825.

THE HISTORY OF THE
CITY OF BOSTON
FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME
BY
JOSEPH NEALE
OF THE BOSTON BAR
IN TWO VOLUMES
VOL. II.
BOSTON: PUBLISHED BY
J. NEALE, AT THE
CITY OF BOSTON, 1825.

fastest road to federal

Wednesday
January 27, 1988

Part VII

Department of Agriculture

Rural Electrification Administration

7 CFR Part 1786

Prepayment of REA Guaranteed Federal
Financing Bank Loans; Interim Rule With
Requests for Comments

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1786

Prepayment of REA Guaranteed Federal Financing Bank Loans

AGENCY: Rural Electrification Administration, USDA.

ACTION: Interim rule with requests for comments.

SUMMARY: The Rural Electrification Administration (REA) is amending 7 CFR Chapter XVII by revising Part 1786, Prepayment of REA Guaranteed Federal Financing Bank Loans. The revised Part establishes policies and procedures to implement the provisions of section 1401 of The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) ("OBRA") relating to section 306(A) of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) (the "RE Act"). Section 306(A) of the RE Act deals with the prepayment of certain loans held by the Federal Financing Bank ("FFB"), a wholly-owned government instrumentality under the supervision of the Secretary of the Treasury, and guaranteed by REA.

These revised regulations will implement section 1401 of OBRA and establish conditions under which REA guaranteed FFB loans may be prepaid by borrowers pursuant to subsections (a) and (b) of section 306(A) of the RE Act, only during FY 1988, notwithstanding the provisions of subsections (c), (d), and (e) of section 306(A).

The regulations also set forth procedures to prioritize prepayment applications. Priority will be given first to: (a) Those 8 borrowers that were determined by the Administrator of REA, prior to December 22, 1987, to be eligible to prepay, or prepaid an FFB loan pursuant to section 306(A); then to (b) other borrowers of loans made by the FFB and guaranteed by REA, on a first come-first served basis in the order in which borrowers are prepared to disburse funds to the FFB.

DATE: Interim Rule is effective January 27, 1988; written comments must be received by REA no later than February 26, 1988.

ADDRESS: Mr. Laurence V. Bladen, Financing Policy Specialist, Rural Electrification Administration, Room 4048, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence V. Bladen, telephone number (202) 382-9558.

SUPPLEMENTARY INFORMATION: Pursuant to the RE Act REA hereby amends 7

CFR Chapter XVII by revising Part 1786, "Prepayment of REA Guaranteed Federal Financing Bank Loans."

This regulation is issued in conformity with Executive Order 12291, Federal Regulations. It will not: (1) Have an annual effect on the economy of \$100 million or more; or (2) result in a major increase in costs or prices for consumers, individuals, industries, Federal, state, or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, and has been determined not to be "major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this amended rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees and 10.851, Rural Telephone Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V in 50 FR 47034, (November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Interim Rule With Request for Public Comment

Pub. L. 100-203, The Omnibus Budget Reconciliation Act of 1987 requires that implementing regulations be issued within 30 days after the date of enactment, which was December 22, 1987. In order to meet the statutory deadline for issuing implementing regulations and at the same time provide the public an opportunity to comment on the regulations, REA is issuing an interim rule with request for public comment. Since OBRA requires these regulations to be issued within 30 days from December 22, 1987, and since the prepayment program under OBRA expires on September 30, 1988, REA finds that good cause exists to make the interim rule effective upon publication, thereby enabling those borrowers having priority under OBRA to proceed with a prepayment application during the 30 day public comment period.

Background

On January 14, 1987, REA published a Final Rule to add a new Part 1786 to 7 CFR Chapter XVII. This rule set forth

the REA policy and procedures implementing section 306(A) of the RE Act which permits an REA-financed electric or telephone system to prepay an FFB loan (or any loan advance thereunder) by paying the outstanding principal balance due on the loan (or advance), if:

(a) The loan was outstanding on July 2, 1986;

(b) Private capital, with the existing loan guarantee, is used to replace the loan; and

(c) The borrower certifies that any savings from such prepayment will be passed on to its customers or used to improve the financial strength of the borrower in cases of financial hardship.

Pursuant to subsection (c) of section 306(A) and the determination of the Secretary of the Treasury, that par prepayments of FFB loans have an adverse effect on the operation of the FFB; the existing regulations limited prepayments during FY 1987 to no more than \$2.0175 billion.

Furthermore, pursuant to subsection (d) of section 306(A), the existing regulations established eligibility criteria to ensure that the authorized prepayments during FY 1987 were directed to the cooperative-type borrowers in the greatest need of the benefits associated with prepayment.

The enactment of section 1401 of OBRA on December 22, 1987, permits a borrower to prepay FFB pursuant to subsections (a) and (b) of section 306(A), only during FY 1988, notwithstanding the provisions of subsections (c), (d), and (e) of said section 306(A).

However section 1401(a) of OBRA provides that prepayments in excess of \$2,000,000,000 during FY 1988 shall be subject solely to the approval of the Secretary of the Treasury. The Secretary of the Treasury has determined that par prepayments in excess of \$2,000,000,000 during FY 1988 will not be approved. Par prepayment causes a measurable dollar loss to the Treasury and thus to the U.S. taxpayer.

Section 1401(a) also allows rural electric and telephone borrowers to refinance their Federal Financing Bank loans in the private credit markets using full government guarantees. Refinancing in this manner: (1) Is contrary to the ongoing role and effectiveness of the FFB, an entity established to provide an efficient, least cost mechanism for financing a broad range of government programs; (2) interferes with the administration of Federal credit policy; (3) competes with the Treasury financing of the national debt; and (4) provides a further subsidy to borrowers. This subsidy would be provided to

borrowers that have already received the lowest available rate at the time that they originally borrowed funds, and this subsidy would be provided outside of the normal budget/appropriations process, without the determination of the need of the borrower for the subsidy.

Thus this determination by the Secretary prevents the U.S. taxpayer from suffering measurable dollar losses above and beyond those that will result from the \$2,000,000,000 of par prepayments mandated by the Congress during FY 1988, as well as protecting the taxpayer from the unquantifiable costs that result from the use of full government guarantees in the private credit markets.

Therefore, the revised regulations do not address payments in excess of \$2.0 billion in FY 1988.

Section 1401 of OBRA also sets forth requirements for prioritizing prepayment applications. Priority will be given first to: (a) Those 8 borrowers that were determined by the Administrator of REA, prior to December 22, 1987, to be eligible to prepay, or prepaid an FFB loan pursuant to section 306(A); then to (b) other borrowers of loans made by the FFB and guaranteed by REA, on a first come—first served basis in the order in which borrowers are prepared to disburse funds to the FFB.

In order to both implement the provisions of section 1401 of OBRA and to modify and clarify certain aspects of the existing regulations, 7 CFR Part 1786 is being revised. The major revisions to the regulations summarized as follows:

The eligibility criteria previously set forth in § 1786.5 have been deleted. Procedures to prioritize prepayment applications and, if necessary, pro-rate applications have been established in a new § 1786.5. The Application Procedure, contained in § 1786.6, has been revised and a new subsection dealing with the submission of applications has been added.

As a result of the experience REA gained from previous prepayment transactions, the qualifications provisions relating to the Private Loan have been modified to permit more flexibility in developing a loan structure, provided that the term, conditions and structure of the Private Loan does not result in an Increase in Loan Guarantee Risk as determined by REA. Additionally, the regulations have been revised to permit the prepayment of FFB advances that bear interest at rates below 10.0 percent.

List of Subjects in 7 CFR Part 1786

Administrative practice and procedure, Electric utilities, Telephone utilities, Guaranteed loan program—

energy, Guaranteed loan program—telephony.

In view of the above, REA amends 7 CFR Ch. XVII by revising Part 1786 to read as follows:

PART 1786—PREPAYMENT OF REA GUARANTEED FEDERAL FINANCING BANK LOANS

Sec.

- 1786.1 Purpose.
- 1786.2 Policy.
- 1786.3 Definitions and rules of construction.
- 1786.4 Qualifications.
- 1786.5 Priority of prepayment applications.
- 1786.6 Application procedure.
- 1786.7 Settlement procedure.
- 1786.8 Forms.
- 1786.9 Access to records of lenders, servicers, and trustees.
- 1786.10 Loss, theft, destruction, mutilation, or defacement of REA guarantee.
- 1786.11 Other prepayments.
- 1786.12 Application of regulation to previous prepayments.
- 1786.13 Judicial review.

Authority: 7 U.S.C. 901-950b; Title I, Subtitle B, Pub. L. 99-509; Title I, Subtitle D, Pub. L. 100-203; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

§ 1786.1 Purpose.

This part contains the general regulations of the Rural Electrification Administration (REA) for implementing the provisions of section 306(A) of the Rural Electrification Act of 1936, as amended (RE Act), and section 1401 of The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) (OBRA) which permit, in certain circumstances, loans made by the Federal Financing Bank (FFB) and guaranteed by the Administrator of REA to be prepaid by REA electric and telephone borrowers by paying the outstanding principal balance due on the FFB Loan, using private capital with the existing REA guarantees.

§ 1786.2 Policy.

It is the policy of REA to facilitate the prepayment of FFB loans in accordance with the provisions of section 306(A) of the RE Act and section 1401 of OBRA. Furthermore, consistent with the RE Act and OBRA it is the policy of REA to implement the objectives of the prepayment program in a manner which does not result in an increase in loan guarantee risk or an inappropriate increase in the administrative burden on REA.

§ 1786.3 Definitions and rules of construction.

(a) *Definitions.* For the purposes of this part, the following terms shall have the following meanings:

"Administrator" means the Administrator of REA.

"Business day" means any day other than a Saturday, a Sunday, a legal public holiday under 5 U.S.C. 6103 for the purposes of statutes relating to pay and leave of employees or any other day declared to be legal holiday for the purposes of statutes relating to pay and leave of employees by Federal statute or Federal Executive Order.

"Date received" means the date inscribed on the Notice of Intent to Prepay the Federal Financing Bank, by an authorized official of REA, as the date the application was received.

"Documentation" means all or part of the agreements relating to a prepayment under this part, irrespective of whether REA is a party to each agreement, including all exhibits to such agreements.

"Existing loan guarantee" means a guarantee of payment issued by A to FFB pursuant to the RE Act for an FFB Loan made on or before July 2, 1986.

"Fees" means any fees, costs or charges, incurred in connection with obtaining the Private Loan used to make the prepayment including without limitation, accounting fees, filing fees, legal fees (including fees and disbursements charged by counsel representing the borrower), printing costs, recording fees, trustee fees, underwriting fees, capital stock purchases or other equity investment requirements of the lender, and other related transaction expenses.

"Financially viable lender" means a lender: (1) Which has a capital and surplus of at least \$50 million; (2) is a beneficiary of an irrevocable letter of credit, in form and substance satisfactory to the Administrator, payable to it in the amount of \$50 million; (3) is the beneficiary of a guarantee, in form and substance satisfactory to the Administrator, in the amount of \$50 million from a lending institution with a capital and surplus of at least \$50 million or (4) has other credit support, in form and substance satisfactory to the Administrator, in the amount of \$50 million.

"FFB" means the Federal Financing Bank, an instrumentality and wholly owned corporation of the United States.

"FFB loan" means one or more advances, or a part of one or more advances, made on or before July 2, 1986, by FFB on a promissory note or notes executed by a borrower and

guaranteed by REA pursuant to section 306 of the RE Act (7 U.S.C. 936).

"Guarantee" means the original endorsement, in the form specified by REA which is executed by the Administrator and shall be an obligation supported by the full faith and credit of the United States and incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

"Increase in loan guarantee risk" means the change in any of the components of loan guarantee risk associated with the private loan which in the judgment of REA increases the magnitude or duration of the loan guarantee risk currently assumed by REA in connection with the existing loan guarantee.

"Lender" means the organization making and servicing the private loan which is to be guaranteed under the provisions of this part and used to prepay the FFB Loan. The term "lender" does not include the FFB, or any other Government agency.

"Loan guarantee agreement" means the written contract by and among the Lender, the borrower, the Administrator, and such other parties that REA may require, setting forth the terms and conditions of a guarantee issued pursuant to the provisions of this part.

"Loan guarantee risk" means the risk as determined by REA associated with guaranteeing a loan for a particular borrower. Components of loan guarantee risk include the following:

- (1) The outstanding principal balance of a loan;
- (2) The dollar weighted average interest rate (stated as an annual percentage rate) on a loan;
- (3) The final maturity date of a loan;
- (4) The annual principal amortization of the loan; and
- (5) Any other factor that as determined by REA increases the magnitude or duration of the guarantee.

"Mortgage" means the mortgage and security agreements by and among the borrower and REA, as from time to time supplemented, amended and restated.

"Notice of Intent to Prepay the Federal Financing Bank" means the notice in the form specified in § 1786.8 hereof.

"OBRA" means section 1401 of The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203).

"Other applications" shall have the meaning specified in § 1786.5(a).

"Priority applications" shall have the meaning specified in § 1786.5(a).

"Priority borrower" means one or more of the following 8 borrowers that were determined by the Administrator of REA, prior to December 22, 1987, to

be eligible to prepay, or prepaid an FFB loan pursuant to section 306(A):

- (1) Arizona Electric Power Cooperative, Inc., Benson, Arizona;
 - (2) Big Rivers Electric Corporation, Henderson, Kentucky;
 - (3) Cajun Electric Power Cooperative, Inc., Baton Rouge, Louisiana;
 - (4) Deseret Generation and Transmission Co-operative, Sandy, Utah;
 - (5) Kansas Electric Power Cooperative, Topeka, Kansas;
 - (6) Soyland Power Cooperative, Inc., Decatur, Illinois;
 - (7) Tex-La Electric Cooperative of Texas, Inc., Nacogdoches, Texas; and
 - (8) Western Illinois Power Cooperative, Inc., Jacksonville, Illinois.
- "Private loan" means a loan or loans to be guaranteed under the provisions of this part and used to prepay an FFB loan.

"Pro-rated applications" shall have the meaning specified in § 1786.5(c).

"Pro-rated borrowers" shall have the meaning specified in § 1786.5(c).

"Pro-rated percentage" shall have the meaning specified in § 1786.5(c).

"REA" means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

"RE Act" means the Rural Electrification Act of 1936 (7 U.S.C. 901-950b), as amended.

"Remaining prepayment amount" shall have the meaning specified in § 1786.5(c).

"Service" or "servicing" means the following activities:

- (1) The billing and collecting of the private loan payments from the borrower;
- (2) Notifying the Administrator promptly of any default in the payment of principal and interest on the private loan and submitting a report, as soon as possible thereafter, setting forth the servicer's views as to the reasons for the default, how long the servicer expects the borrower to be in default, and what corrective actions the borrower states it is taking to achieve a current debt service position;
- (3) Notifying the Administrator of any known violations or defaults by the borrower under the lending agreement, loan guarantee agreement, the mortgage, or related security instruments, or conditions of which the servicer or the lender is aware which might lead to nonpayment, violation or other default; and
- (4) Such other activities as may be specified in the loan guarantee agreement.

"Settlement date" means the date specified on the Notice of Intent to Prepay the Federal Financing Bank as

the settlement date. Such date shall be the date the borrower is prepared to disburse funds to the FFB in order to complete a prepayment pursuant to this part, and shall be a business day.

(b) *Rules of construction.* Unless the context shall otherwise indicate, the terms defined in § 1786.3(a) hereof include the plural as well as the singular, and the singular as well as the plural. The words "herein," "hereof" and "hereunder", and words of similar import, refer to this part as a whole.

§ 1786.4 Qualifications.

(a) *Borrowers*—(1) *All borrowers.* To qualify to prepay an FFB loan pursuant to this part, the borrower must:

- (i) Demonstrate that the FFB loan was outstanding on July 2, 1986;
- (ii) Prepay the FFB loan using private capital with the existing loan guarantee;
- (iii) Certify that any savings resulting from such prepayment will be passed on to its customers, or used to improve the financial strength of the borrower in cases of financial hardship.

(2) *Priority borrowers.* In order to qualify for priority in making a prepayment pursuant to this part, a priority borrower, in addition to qualifying under § 1786.4(a)(1), must comply with the following:

- (i) The Notice of Intent to Prepay the Federal Financing Bank of the priority borrower must be received by REA on or before February 26, 1988, or the next preceding business day if February 26, 1988 is not a Business Day; and
- (ii) The priority borrower must

disburse funds to the FFB on or before May 26, 1988, or the next preceding business day if May 26, 1988 is not a business day, in order to complete the prepayment contemplated by its Notice of Intent to Prepay the Federal Financing Bank.

Nothing contained herein prohibits a priority borrower from applying to make a prepayment pursuant to this part without complying with § 1786.4(a)(2). Such an application must comply with all other provisions of this part and shall be processed without priority.

(b) *Lenders.* To participate in a borrower's prepayment of an FFB loan pursuant to this part, the lender must:

- (1) be a private legally organized lender;
- (2)(i) Be subject to credit examination and supervision by either an agency of the United States or a state and be in good standing with its licensing authority and have met the requirements, if any, of licensing, lending and loan servicing in the state where the collateral for the loan is located;

(ii) Be a financially viable lender; or
(iii) Be a trust administered by an entity meeting the requirements of (b)(2)(i) of (ii) of this section; and

(3) Have the capability to adequately service the private loan either by using its own resources or by contracting for such resources with a financially viable lender. Under no circumstances may the borrower or an affiliate of the borrower service the private loan.

A qualified lender may participate out each private loan to entities other than a Government agency, the borrower, or an affiliate of the borrower, provided that such participation shall be on terms and conditions satisfactory to the Administrator. Generally, the lender may utilize any financing structure it desires in obtaining funds to make the private loan, providing the private loan meets the requirements of § 1786.4(c).

(c) *Private loans.* Private loans, the proceeds of which are used exclusively to prepay FFB Loans, shall be eligible for a guarantee under this part. The Administrator shall endorse a guarantee on each note evidencing a qualifying private loan. Consistent with the statutory requirement that a qualifying borrower may make a par prepayment of a FFB loan pursuant to section 306(A) of the RE Act, if:

* * * private capital, with the existing loan guarantee, is used to replace the loan * * *;

the private loan shall be structured in a manner which in the judgment of REA shall not result in an increase in loan guarantee risk and shall comply with the following:

(1) The private loan shall provide for the periodic payment of interest by the borrower not less frequently than annually, at either a variable or fixed rate in a manner which shall not result in an increase in loan guarantee risk. (i.e. The dollar weighted average interest rate on the private loan shall be less than or equal to the dollar weighted average interest rate on the FFB loan being prepaid, so that:

$$C_r = C_o + \frac{\sum_{i=1}^n (C_o - A_i) T_i}{(J - n)}$$

Where,

C_r = The revised interest rate cap;

C_o = The original interest rate cap at the time of prepayment;

A_i = The average interest rate actually charged in the i^{th} period;

T_i = Length of the i^{th} period expressed in years;

n = The number of years that have elapsed since the initial prepayment;

J = The initial term of the Private Loan, at the time of prepayment;

Subject to the constraint that A_i , one must be less or equal to C_o .

(2) Principal payments on the private loan shall be made either quarterly, semiannually, or annually and shall commence on or before the last day of the calendar year during which the prepayment pursuant to this part was made.

(3) With the approval of the Administrator, the lender may refund the private loan with the proceeds of another loan from the same lender, with the existing guarantee and under terms, conditions, and a structure substantially similar to the private loan, on such dates as the lender, the borrower and REA may agree, provided however, that such a refunding loan shall comply with the provisions of § 1786.4(c) hereof. Additionally, with the approval of the Administrator, the private loan may be prepaid either in whole or in part at any time by the borrower using its general funds.

(4) The private loan and the guaranteed note evidencing the private loan shall not be directly or indirectly part of a transaction the income of which is excluded from gross income for the purposes of Chapter I of the Internal Revenue Code of 1986.

(5) The guaranteed note evidencing the private loan shall not be transferable or assignable except—

(i) With the written approval of the Administrator;

(ii) In the event that the guaranteed note evidencing the private loan is held by a trust, to a similar trust, in connection with a refunding loan made by the lender pursuant to § 1786.4(c)(3); or

(iii) As an undivided pro rata interest in a pool of obligations.

(6) The loan documentation shall provide REA with the right to accelerate the private loan upon the occurrence of an event of default, as that term is defined in the mortgage, on the earlier of—

(i) Any date the interest rate on the private loan is reset, without premium or penalty;

(ii) Any date the borrower may prepay in accordance with the terms of the private loan, or

(iii) The tenth anniversary of the date the private loan first bears interest at a fixed interest rate.

(7) The principal of private loan shall not include amounts attributable to fees associated with the private loan. At the time it submits its application, a borrower may request that the

Administrator approve the inclusion of amounts attributable to fees as part of the interest rate on the private loan, if the net effective interest rate including such fees meets the test contained in § 1786.4(c)(1). For the purposes of these regulations, such financed fees shall be considered "interest".

(8) Private loans and guaranteed notes evidencing private loans shall otherwise be in form and substance satisfactory to the Administrator.

(d) *FFB loans.* A borrower's FFB loans that qualify to be prepaid pursuant to this part are advances with long-term maturity dates.

§ 1786.5 Priority of prepayment applications.

(a) *Primary order of priority.*

Applications from borrowers to prepay pursuant to this part will be separated into the following two categories and processed by REA in the following primary order of priority:

(1) *Priority applications:* Priority applications are applications to make a prepayment pursuant to this part from priority borrowers that qualify in accordance with § 1786.4(a)(2) hereof;

(2) *Other applications.* Other applications are applications to make a prepayment pursuant to this part from all borrowers that qualify in accordance with § 1786.4(a)(1) hereof.

(b) *Manner of processing.* As stated above, priority applications will be processed by REA before other applications. Within each category, applications will be processed by REA in the following manner:

(1) *Priority applications:* Priority applications will be processed by REA in accordance with the settlement date specified by the priority borrower in its Notice of Intent to Prepay the Federal Financing Bank. The priority application with the earliest settlement date will be processed first, the priority application with the next earliest settlement date will be processed second, and so on, until all priority applications have been processed.

(i) If more than one priority borrower specifies the same settlement date, their priority applications will be processed in accordance with the date received. The priority application with the earliest date received will be processed first, the priority application with the next earliest date received will be processed second, and so on, until all priority applications with the same settlement date have been processed.

(ii) In the event that the priority borrower is unable to complete the prepayment by the settlement date specified in the Notice of Intent to

Prepay the Federal Financing Bank, REA may require the priority borrower to submit a new Notice of Intent to Prepay the Federal Financing Bank specifying a revised settlement date, and then its application will be reprocessed in accordance with the revised settlement date and the revised date received.

(iii) In order to retain its status as a priority application, the revised settlement date specified on the new Notice of Intent to Prepay the Federal Financing Bank must be on or before May 26, 1988, or the next preceding business day if May 26, 1988 is not a business day. In the event that the new settlement date specified on the new Notice of Intent to Prepay the Federal Financing Bank is after May 26, 1988, the application will be processed in the manner specified in § 1786.5(b)(2).

(2) *Other applications.* Other applications will be processed by REA in accordance with the settlement date specified by the borrower in the Notice of Intent to Prepay the Federal Financing Bank. The other application with the earliest settlement date will be processed first, the other application with the next earliest settlement date will be processed second, and so on, until all other applications have been processed.

(i) If more than one borrower specifies the same settlement date, their applications will be processed in accordance with the date received. The application with the earliest date received will be processed first, the application with the next earliest date received will be processed second, and so on, until all applications have been processed.

(ii) Should a borrower be unable to complete the prepayment by the settlement date specified in the Notice of Intent to Prepay the Federal Financing Bank, REA may require the borrower to submit a new Notice of Intent to Prepay the Federal Financing Bank specifying a revised settlement date, and then its application will be reprocessed in accordance with the revised settlement date and the revised date received.

(c) *Pro-rated applications.* Borrowers' applications will be prorated to permit partial prepayments in the event that more than one prepayment application specifies the same settlement date; more than one prepayment application bears the same date received; and the combined amount of the proposed prepayments under these applications would cause the total amount of prepayments made during FY 1988 pursuant to this part to exceed \$2.0 billion. Such applications are hereinafter called pro-rated applications and such

borrowers are hereinafter called pro-rated borrowers. In such circumstances, the amount of each pro-rated borrower's permitted prepayment shall be determined as follows:

(1) The amount of FFB advances under each individual pro-rated application, which, if prepaid pursuant to this part, would result in an economic savings to the borrower, shall be divided by the aggregate amount of FFB advances, under all of the pro-rated applications, which, if prepaid pursuant to this part, would result in economic savings to the borrowers, in order to determine a percentage (hereinafter called a pro-rated percentage) for each pro-rated borrower;

(2) The aggregate amount prepayments to be allocated among pro-rated borrowers shall be determined by subtracting from \$2.0 billion the sum of (i) the total amount of prepayments previously completed during FY 1988 and (ii) the amount of prepayments expected to be completed prior to the settlement date specified in the pro-rated applications (such remainder is hereinafter called the remaining prepayment amount);

(3) Each pro-rated borrower's share of the remaining prepayment amount shall be equal to the product of (i) the remaining prepayment amount times (ii) the respective pro-rated percentage; and

(4) If any expected prepayment fails to be completed prior to settlement date specified in the pro-rated applications, the remaining prepayment amount may in the discretion of REA be recalculated and reallocated.

§ 1786.6 Application procedure.

(a) Each application to make a prepayment pursuant to this part shall be submitted to REA on such forms as REA may prescribe. No application from a borrower other than an application from a priority borrower will be accepted by REA until after February 26, 1988. An application shall not be deemed submitted to REA until it is received by REA, and the "date received" has been inscribed on the Notice of Intent to Prepay the Federal Financing Bank by an authorized official of REA. Each application to make a prepayment pursuant to this part must be received by REA not less than 15 Business Days prior to the settlement date specified in the Notice of Intent to Prepay the Federal Financing Bank. Incomplete applications may be returned to the borrower at the discretion of REA and thereafter must be resubmitted in order to be processed. To be considered complete, the application should include the following:

(1) "Notice of Intent to Prepay the Federal Financing Bank" in the form specified in § 1786.3 hereof;

(2) A listing of each FFB Loan advance to be prepaid by loan designation, REA account number, advance date, maturity date, original amount, and outstanding balance;

(3) Evidence that the borrower meets the qualification provisions of § 1786.4(a) of these regulations;

(4) A certification of the chief executive officer of the borrower stating that, "Any savings from the prepayment of Federal Financing Bank Loans pursuant to section 306(A) of the Rural Electrification Act of 1936, as amended (7 U.S.C. 936(A)) will be passed on to the customers of (insert the corporate name of the borrower) or used to improve the financial strength of (insert the corporate name of the borrower) in cases of financial hardship."

(5) A certified copy of a resolution of the board of directors of the borrower approving the certification cited above and requesting REA approval of the prepayment;

(6) A proposal for the private loan from a lender selected by the borrower. The proposal shall contain the following material:

(i) Documentation for the private loan;

(ii) Evidence that the lender meets the qualification provisions of § 1786.4(b);

(iii) Evidence that the private loan meets the qualification provisions of § 1786.4(c); and

(iv) Proposed amortization schedule for the private loan;

(7) Estimate of fees, and expenses, including any taxes;

(8) Evidence that the borrower has received all approvals which can be obtained at the time of application and which are required under Federal or state law, loan agreements, security agreements, existing financing arrangements, or any other agreement to which the borrower is a party and the approvals that have not been obtained are not unobtainable; and

(9) In the case of priority borrowers evidence in form and substance satisfactory to the Administrator that the benefits of prepayment will not be used to reduce rates and that any Federal or state regulatory body having jurisdiction over the borrower's rates acknowledges its awareness of this requirement.

(b) *Loan commitment.* In order to maintain its place in the prepayment queue, the borrower must submit, no later than 5 business days prior to the settlement date specified in its Notice of Intent to Prepay the Federal Financing Bank:

(1) All final documentation;

(2) Evidence, in form and substance satisfactory to REA, that the borrower has obtained all the approvals set forth in § 1786.6(a)(8) that had not been obtained at the time of application and which REA determines to be necessary for settlement; and

(3) Evidence, in form and substance satisfactory to REA, that the borrower has an irrevocable commitment from the lender to close the private loan on the settlement date at an interest rate that meets the requirements of § 1786.4(c)(1). In the event that borrower is unable to deliver final documentation or the evidence specified above, the borrower's prepayment application may be removed by REA from the prepayment queue and in such event the borrower shall submit a revised Notice of Intent to Prepay the Federal Financing Bank in order to have its application reconsidered.

(c) *Procedure for submission of prepayment applications.* An original and three copies of each prepayment application must be submitted, between the hours of 8:15 a.m. to 4:45 p.m. Washington, DC time, to: Mr. Walter Twigg, Chief, Communications and Records Management Branch, Administrative Service Division, Rural Electrification Administration, U.S. Department of Agriculture, Room 0175 South Agriculture Building, Washington, DC 20250. The outside front of the package containing the prepayment application must be clearly marked, "FFB PREPAYMENT APPLICATION." An original and four copies of the Notice of Intent to Prepay the Federal Financing Bank must be the first document in the application package. Upon receipt the prepayment application will be opened, logged in and, the Notice of Intent to Prepay the Federal Financing Bank will be inscribed with the date received by an authorized official of REA. A copy of the Notice of Intent to Prepay the Federal Financing Bank will then be returned to the borrower. Should an application be submitted other than in accordance with the provisions of § 1786.6, the date received shall be a date determined by REA in its sole discretion.

§ 1786.7 Settlement procedure.

(a) *General.* Private loan settlements in connection with prepaying FFB Loans pursuant to this part shall be conducted in accordance with the provisions of this section.

(b) *Settlement date.* The private loan will be settled and the guarantee delivered on the settlement date.

(c) *Place of settlement.* All private loan settlements will take place in Washington, DC, at a location of the borrower's choosing; provided however, if more than one settlement is scheduled for the same settlement date, REA reserves the right to coordinate the locations of the settlements with borrowers involved.

(d) *Repayment of FFB.* Prior to 1:00 p.m. prevailing local time in New York, New York, on the settlement date, the borrower shall wire immediately available funds to REA through the Department of the Treasury account at the Federal Reserve Bank of New York or shall provide for payment to REA in another manner acceptable to REA, in an amount sufficient to pay the outstanding principal of the FFB loan plus accrued interest from last payment date to and including the settlement date.

(e) *Substitute note.* In the event that a borrower does not prepay all FFB loans evidenced by the same promissory note, REA may require the borrower to execute and deliver a substitute note to evidence its obligation to pay in accordance with its terms the remaining FFB loans.

(f) *Documentation.* The following executed documents, opinions and material shall be delivered at the settlement:

(1) The guaranteed note evidencing the private loan.

(2) The guarantee.

(3) The loan guarantee agreement.

(4) Copy of the private loan agreement between the lender and the borrower.

(5) Evidence that the borrower has received all approvals which are required under Federal or state law, loan agreements, security agreements, existing financing arrangements, or any other agreement to which the borrower is a party.

(6) An amendment in recordable form revising the description of the obligations secured by the mortgage including the obligation of the borrower to reimburse REA for any amounts that REA may pay under the guarantee.

(7) An approving opinion of the borrower's legal counsel to the effect that the guaranteed note evidencing the private loan is a valid and legally binding obligation of the borrower which is secured under the mortgage, and the priority of the mortgage, as amended pursuant to paragraph (f)(6) of this section, remains undisturbed. In the event that REA requires the borrower to deliver a substitute note pursuant to paragraph (e) of this section, then a similar conclusion concerning such substitute note shall be contained in the opinion required under this paragraph.

(8) An approving opinion of the lender's legal counsel to the effect that the loan guarantee agreement is a valid and legally binding obligation of the lender.

(9) Such other opinions of counsel as may be required by the Administrator.

(10) Copies of any other documentation required by the lender.

(11) Copies of any other documentation required by REA to ensure that the obligations of the borrower to reimburse REA for any amounts that REA pays under the guarantee or may advance in connection with the private loan are adequately secured under the mortgage.

§ 1786.8 Forms.

Guarantees and loan guarantee agreements executed by REA pursuant to this part will be on forms prescribed by REA. Such forms will include, without limitation, additional details on servicing, procedures for notifying REA of a default, the manner for requesting payment on a guarantee. The Notice of Intent to Prepay the Federal Financing Bank shall be substantially in the form specified by REA. REA may also prescribe standard forms of certifications to be used in connection with materials required to be furnished pursuant to § 1786.6(a)(4) of this part.

§ 1786.9 Access to records of lenders, servicers, and trustees.

The lender, the servicer, or the trustee will permit representatives of REA (or other agencies of the U.S. Department of Agriculture authorized by that Department) to inspect and make copies of any of their records pertaining to REA guaranteed loans. Such inspection and copying may be made during regular office hours of the respective party or any other time the party and REA find convenient.

§ 1786.10 Loss, theft, destruction, mutilation, or defacement of REA guarantee.

(a) *Authorized representative.* Except where the evidence of debt was or is a bearer instrument, the REA Deputy Administrator Program Operations is authorized on behalf of REA to issue a replacement guarantee(s) for one(s) which may have been lost, stolen, destroyed, mutilated, or defaced. Such replacement(s) shall be issued only to the lender or holder and only upon receipt of an acceptable certificate of loss and an indemnity bond.

(b) *Requirements.* When a guarantee(s) is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender, or holder, the lender will coordinate the activities of

the party who seeks the replacement documents and will submit the required documents to REA for processing. The requirements for replacement are as follows:

- (1) A certificate of loss properly notarized which includes:
 - (i) Legal name and present address of the owner, requesting the replacement forms.
 - (ii) Legal name and address of lender of record.
 - (iii) Capacity of person certifying.
 - (iv) Full identification of the guarantor, including the name of the borrower, date of the guarantee, face amount of the evidence of debt purchased, date of evidence of debt and present balance of the loan. Any existing parts of the documents to be replaced should be attached to the certificate.
 - (v) A full statement of circumstances of the loss, theft, or destruction of the guarantee.
 - (vi) The lender or holder, shall present evidence demonstrating current ownership of the guarantee and note. If the present holder is not the same as the original lender, a copy of the endorsement of each successive holder in the chain of transfer from the initial private lender to present holder shall be included. If copies of the endorsement cannot be obtained, best available records of transfer shall be presented to REA (e.g., order confirmation, cancelled checks, etc).

(2) An indemnity bond acceptable to REA shall accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal Government Corporation, a state or territory, or the District of Columbia. The bond may be with or without surety. The bond shall be with surety except when the outstanding principal balance and accrued interest due the present holder is less than \$1,000,000 verified by the lender in writing in a letter of certification of balance due. The surety shall be a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 580.

(3) All indemnity bonds shall be issued and/or payable to the United States of America acting through the Administrator of the Rural Electrification Administration. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall save REA harmless against any claim or demand which might arise or against any damage, loss, costs, or expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

§ 1786.11 Other prepayments.

Nothing contained in this part shall prohibit a borrower from making prepayments of FFB Loans in accordance with the terms thereof.

§ 1786.12 Application of regulation to previous prepayments.

Nothing contained in this part shall affect the validity of prepayments made or guarantees issued pursuant to previous regulations. Those borrowers, however, that completed a prepayment pursuant to section 306(A) of the RE Act and closed loans prior to December 22, 1987, may, in their discretion request REA approval of any amendments necessary to make the terms and conditions of such loans consistent with loans guaranteed under these regulations.

§ 1786.13 Judicial review.

This part is intended to set forth REA policies and procedures for the orderly administration of the provisions of section 306(A) of the RE Act and section 1401 of OBRA, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person.

Dated: January 22, 1988.

Harold V. Hunter,
Administrator.

Editorial Note: The following form of Notice of Intent to Prepay the Federal Financing Bank (which will not be published in the Code of Federal Regulations) may be used in connection with a prepayment application.

BILLING CODE 3410-15-M

Exhibit A

45

USDA-REA

BORROWER DESIGNATION

NOTICE OF INTENT TO PREPAY THE FEDERAL FINANCING BANK

REA USE ONLY

Date Received

Initials

INSTRUCTIONS — Submit an original and four copies to: Walter Twiggs, Chief, Communications and Records Management Branch, Administrative Services Division, Rural Electrification Administration, U.S. Department of Agriculture, Room 0175 South Agriculture Building, Washington, DC 20250 (See 7 CFR 1786.6, "Application Procedure").

NOTIFICATION

(Borrower Name) hereby notifies the Administrator of the Rural Electrification Administration (REA) of its intent to prepay the Federal Financing Bank under the provisions of 7 CFR 1786, "Prepayment of REA Guaranteed Federal Financing Bank Loans", (the "Regulations") and pursuant to §306(A) of the Rural Electrification Act of 1936, as amended. The following information is provided to REA in connection with its application to prepay:

1. Borrower Name and Address:

2. Proposed Prepayment Amount:

\$

3. Dollar weighted average FFB interest rate on the proposed prepayment amount:

4. Name and Address of Proposed Lender; Servicer; and Trustee:

LENDER

SERVICER

TRUSTEE

5. Settlement Date (the date the borrower is prepared to disburse funds to FFB):

, 19

ACKNOWLEDGMENT

(Borrower Name) acknowledges that the Settlement Date and the Date Received (as those terms are defined in the Regulations) inscribed hereon may be used by REA to establish processing priority.

BY: (Authorized Official of Borrower)

TITLE:

DATE:

REA Form 606 (1-88)

[FR Doc. 88-1663 Filed 1-16-88; 8:45 am]

BILLING CODE 3410-15-C

Reader Aids

Federal Register

Vol. 53, No. 17

Wednesday, January 27, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230
---------------------	----------

Other Services

Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-106	4
107-230	5
231-398	6
399-486	7
487-608	8
609-732	11
733-772	12
773-854	13
855-998	14
999-1330	15
1331-1466	19
1467-1600	20
1601-1738	21
1739-1908	22
1909-1996	25
1997-2212	26
2213-2476	27

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:	
5760	855
5761	1464
5762	1980

Executive Orders:

12537 (Amended by EO 12624)	489
12578 (Superseded by EO 12622)	222
12622	222
12623	487
12624	489

Administrative Orders:

Presidential Determinations:	
No. 88-2 of Oct. 30, 1987	399
No. 88-4 of Dec. 17, 1987	773
No. 88-6 of Jan. 19, 1988	1601
Presidential Findings:	
Jan. 12, 1988	999

5 CFR

297	1997
353	857
551	1331, 1739
890	1, 860

Proposed Rules:

213	1789
330	408
338	1789
351	408
890	898

7 CFR

1	1001
7	1441
27	2213
28	2213
61	2213
246	2213
272	1603
275	1603
301	733
353	1332
354	1740
400	2
401	1001
405	1467
614	1605
704	733
724	1605
905	401, 860
907	6, 491, 1333, 1741
910	7, 492, 1333, 1742
911	402, 1742
915	1742
928	862

959	401
971	401
987	401
1230	1909
1430	107
1610	1743
1786	2468
1902	231
1924	2150
1930	2150
1933	2150
1943	2147
1944	2150
1951	2150
1965	2150

Proposed Rules:

68	411
301	140
401	505, 507
451	1640
905	898
907	412
908	412
910	255
979	413
981	414
982	900
1006	1035
1012	1035
1013	1035
1033	902
1046	902
1068	1360
1097	1369
1106	1370, 1790
1126	256
1136	686
1260	509
1421	2037
1701	140

8 CFR

Proposed Rules:

1	2426
204	2426
205	2426
211	2426
212	2426
214	2426
216	2426
223	2426
223a	2426
232	1791
233	1791
235	1791, 2426
237	1791
238	1791
239	1791
242	2426
245	2426
280	1791
299	1791

9 CFR

77.....1002
78.....2221

10 CFR

1.....1744
73.....403
Proposed Rules:
2.....415
62.....1926
430.....30
730.....1594

11 CFR

Proposed Rules:
109.....416
114.....416

12 CFR

206.....492
208.....492
226.....467
337.....597, 2223
501.....1003
525.....312
561.....324, 338
563.....324, 338, 354, 363,
372, 385, 1004
563c.....324
571.....338, 372, 385
583.....312, 1003
584.....312
614.....775
795.....1005
Proposed Rules:
226.....467

13 CFR

108.....1468
140.....1606

14 CFR

21.....1745, 1746
23.....1745, 1746
39.....8-14, 232, 493-495,
1334, 1468, 1608-1613,
2005
47.....1911
49.....1911
71.....496, 497, 619, 1335,
1336, 1614, 2006-2013
75.....497, 1336-1339,
2014-2017
91.....233
95.....1005
97.....499
108.....2223
129.....2223
Proposed Rules:
Ch. I.....1038
21.....2037, 2039
23.....2037, 2039
39.....258, 514, 515,
1371-1374, 2227, 2228
71.....516, 517, 666,
670, 674, 907-910,
1375
73.....517, 991

15 CFR

372.....1614
374.....1614
399.....108, 1616
806.....1015
Proposed Rules:
379.....418

16 CFR

13.....609, 2223, 2224
Proposed Rules:
13.....141, 1039, 2230

17 CFR

1.....609, 615
211.....109, 865, 1341
Proposed Rules:
300.....1793

18 CFR

3.....1469
154.....867, 1748
270.....867
271.....15
273.....867
375.....867, 1469, 1748
381.....867, 1469
382.....1748
388.....1469
389.....1750, 2224
410.....1751
1301.....405

19 CFR

4.....1103
24.....615
Proposed Rules:
132.....1376
141.....30
142.....1376
178.....30

20 CFR

Proposed Rules:
361.....143
901.....147

21 CFR

5.....2225
81.....19
176.....97
193.....20, 233, 1916
312.....1917
436.....1918
452.....1918
540.....234
546.....235
558.....235, 236, 1017
561.....20, 233, 1916
606.....111
610.....111
640.....111
884.....1554
892.....1554
1308.....500, 2225

Proposed Rules:

102.....1795
193.....259
201.....1796, 2436
356.....2436
358.....2198
369.....2436
561.....259
864.....1574
866.....1574
868.....1574
870.....1574
876.....1574
880.....1574
882.....1574
884.....1574
890.....1574
892.....1574

1308.....743

23 CFR

635.....1920, 1922
655.....236
Proposed Rules:
625.....2041
626.....2041
655.....2233

24 CFR

200.....842
203.....868
215.....842, 1122
221.....615
235.....842
236.....615, 842
247.....842
812.....842
880.....842, 1122
881.....842, 1122
882.....842, 1122
883.....842, 1122
884.....842, 1122
886.....842, 1122
904.....1122
905.....1122
912.....842
960.....1122
Proposed Rules:
115.....260

25 CFR

Proposed Rules:
151.....1797

26 CFR

1.....117, 238, 1103, 1441
Proposed Rules:
1.....153, 261

27 CFR

Proposed Rules:
9.....1492

28 CFR

55.....735
541.....196

29 CFR

2610.....1904
2616.....1904
2617.....1904
2618.....1904
2676.....1018
2702.....737

Proposed Rules:

1910.....1724, 2047
1926.....2049
2550.....1798

30 CFR

75.....2354
202.....1184, 1230
203.....1184
206.....1184, 1230
207.....1184
210.....1184
241.....1184
800.....994
Proposed Rules:
75.....2382
210.....1039
216.....1039

31 CFR

103.....776

32 CFR

45.....1341
104.....1343
199.....2018
374.....1345
552.....1752
887.....876

Proposed Rules:

199.....1378, 1926

33 CFR

110.....878
117.....119, 406, 2034
165.....616, 878
166.....1347

Proposed Rules:

140.....2236
143.....2236
146.....2236

34 CFR

Proposed Rules:
303.....1461

36 CFR

5.....739
404.....120
1254.....1348
Proposed Rules:
223.....519

37 CFR

201.....122, 123
Proposed Rules:
203.....153

38 CFR

4.....21, 1441
17.....1755
21.....616, 879, 1756, 1779
36.....1349

Proposed Rules:

21.....620, 1040
36.....1378

39 CFR

111.....124, 125
232.....126
233.....1780

Proposed Rules:

946.....2236

40 CFR

2.....214
51.....392, 480
52.....392, 501, 1019, 1020,
1354, 1760
61.....777
86.....470
180.....241, 243, 657, 1923
271.....126-128, 244, 1358
421.....1704
763.....1021
Proposed Rules:
52.....261, 779, 1043
86.....1716
145.....2238
156.....1494
170.....1494
180.....262, 263, 1495, 2147,
2238
192.....1641

261.....	519
373.....	850
795.....	911
796.....	911
799.....	911, 913

41 CFR

101-20.....	129
105-60.....	1478
114-51.....	741

Proposed Rules:

Ch. 201.....	620
51-7.....	1379
141.....	31
142.....	31
201-11.....	1805
201-30.....	1805
201-31.....	1805
201-32.....	1805
261.....	31

42 CFR

405.....	1617
412.....	1621
413.....	1621
418.....	1621
431.....	657
435.....	657
440.....	657
441.....	657
442.....	1984

Proposed Rules:

410.....	1383
434.....	744
435.....	744

43 CFR

2.....	24
3100.....	1184
3160.....	1184

Public Land Orders:

6661.....	1359
6662.....	1359

Proposed Rules:

3160.....	1039
3590.....	2055

44 CFR

64.....	14855
---------	-------

Proposed Rules:

7.....	922
61.....	419
62.....	419
80.....	621
82.....	621
83.....	621

45 CFR

95.....	26
233.....	467

Proposed Rules:

1215.....	1496
1336.....	1806

46 CFR**Proposed Rules:**

588.....	624
----------	-----

47 CFR

Ch. I.....	502
0.....	1022
15.....	1781
64.....	27
65.....	1027
68.....	1103

73.....	28, 29, 504, 1030, 1629, 1630, 1782
90.....	1022

Proposed Rules:

1.....	625
63.....	625
73.....	426, 1386-1388, 1807, 1808, 2061-2064
74.....	529
76.....	625
78.....	529
95.....	779

48 CFR

7.....	660
8.....	660
13.....	660
14.....	660
19.....	660
22.....	660
25.....	660
26.....	660
28.....	660
29.....	660
33.....	660
42.....	660
45.....	660
52.....	660
208.....	1924
501.....	130, 132, 1441, 1540
513.....	132, 1441
525.....	1925
836.....	1630
852.....	1630

Proposed Rules:

28.....	2464
37.....	2464
52.....	2464
215.....	625
225.....	626
232.....	931
252.....	626, 931
404.....	749
407.....	749
409.....	749
410.....	749
412.....	749
414.....	749
415.....	749
416.....	749
417.....	749
419.....	749
422.....	749
424.....	749
425.....	749
428.....	749
432.....	749
436.....	749
437.....	749
439.....	749
442.....	749
445.....	749
446.....	749
447.....	749
452.....	749

49 CFR

24.....	467
31.....	880
190.....	1633
192.....	1633
301.....	2035
386.....	2035
389.....	2035
541.....	133
544.....	1641

565.....	1032
571.....	1783
661.....	617

Proposed Rules:

3.....	100
7.....	100
10.....	100
192.....	1043, 1045
383.....	265
391.....	42
544.....	1635
571.....	426, 780, 934, 936, 1643, 2239
572.....	2254
1041.....	155
1048.....	155
1049.....	155

50 CFR

33.....	1487
216.....	1638
611.....	134, 741, 890, 894, 2147
653.....	244
663.....	246, 248
672.....	890, 991
675.....	894, 991, 2147

Proposed Rules:

17.....	1929
20.....	42, 1645
226.....	530
301.....	156
652.....	265
658.....	266
672.....	627

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List January 14, 1988

Code of Federal Regulations

Revised as of October 1, 1987

Quantity	Volume	Price	Amount
	Title 48—Federal Acquisition Regulations System		
_____	Ch. 1 (Parts 1-51) (Stock No. 869-001-00169-1)	\$26.00	\$ _____
_____	Ch. 1 (Parts 52-99) (Stock No. 869-001-00170-4)	16.00	_____
_____	Ch. 2 (Parts 201-251) (Stock No. 869-001-00171-2)	17.00	_____
	Title 49—Transportation		
_____	(Parts 1000-1199) (Stock No. 869-001-00181-0)	17.00	_____
_____	(Parts 1200-End) (Stock No. 869-001-00182-8)	18.00	_____
		Total Order	\$ _____

Please do not detach

Mail to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Order No. _____



Expiration Date
Month/Year

PLEASE PRINT OR TYPE

Quantity	Charges
----------	---------

Enclosed	
To be mailed	
Subscriptions	
Postage	
Foreign handling	
MMOB	
OPNR	
UPNS	
Discount	
Refund	

